

1 cite studies that attempt to show voter ID laws do not
2 suppress turnout, and they even try to claim that
3 turnout increases in Indiana and Georgia were caused
4 by the voter ID laws. What are your thoughts on that
5 claim?

6 MR. SKAGGS: You know, again, I suppose
7 it's a good rhetorical point for proponents of such
8 policies, but I think it's a specious argument, and it
9 just doesn't withstand any kind of scrutiny,
10 statistically or otherwise. Any social science
11 methodology would suggest that those studies are
12 completely incredible.

13 Bear in mind that the main study we're
14 talking about that the first witness here this evening
15 discussed concluded that voter ID policies in Georgia
16 and Indiana actually drove voter turnout up, that
17 there was a casual relationship between adopting these
18 strict ID policies and turnout going up. And it came
19 to its conclusion by comparing Indiana with Illinois
20 and Georgia with Mississippi.

21 When asked about the possible
22 methodological flaws, Mr. von Spakovsky said, "We
23 controlled for any impact that Barack Obama's presence
24 on the ticket would have had in skewing this data,
25 because then Sen. Obama was not only on the ticket --

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1 on the ballot in Indiana and Georgia, but he was also
2 on the ballot in Illinois and Mississippi. And that's
3 true insofar as it goes, but I don't think that goes
4 very far in explaining why we should give any
5 credibility to these studies.

6 What these studies didn't take account
7 of at all is the status of these states, the swing
8 states, the status of these as hotly contested
9 elections. There was no controlling for the amount of
10 advertising that was run in Indiana versus Illinois.
11 There was no taking account for number of candidate
12 appearances in Indiana versus Illinois of Georgia
13 versus Mississippi, the number of ads run by the
14 campaigns that are ads run by other interested groups.

15 So any study that fails to take account
16 this sort of intense mobilization efforts that were
17 poured into these states as compared to states,
18 Mississippi and Illinois, that one campaign had
19 essentially conceded and were ready hardly contested
20 at all because the results were a foregone conclusion,
21 any study that doesn't look at those factors -- the
22 amount of mobilization, the amount of money spent by
23 the campaigns and others -- is simply incredible.

24 Now, I'm not suggesting that changes in
25 turnout were caused specifically by the number of

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1 appearances that the candidates made or their proxies
2 or the amount of advertising that either of the
3 campaigns put up. But what I am suggesting is that
4 first, those are much more I think credible
5 explanations of why voter turnout went up in those two
6 states and, secondly, that we simply can't -- the
7 point is that you can't prove what the causation was
8 in any of these cases. There are too many factors.
9 The studies that have been conducted are far too
10 crude.

11 So if there is any single take-away, I
12 would just suggest that any of these claims that voter
13 turnout actually goes up because of strict voter ID
14 requirements and some resulting increase in confidence
15 amongst the voting population should just simply be
16 looked at with a tremendous amount of skepticism.

17 SEN. DAVIS: Are you aware in your work
18 on behalf of the Brennan Center, are you aware of any
19 empirical data -- exit polling, surveys or
20 otherwise -- in which people were asked whether their
21 appetite for voting indeed increased by virtue of the
22 passage of photo ID laws in the states in which
23 they're voting?

24 MR. SKAGGS: I am aware of one study in
25 particular on that subject. We've heard about it from

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1 a couple of the folks that have testified here before
2 this me evening, and that's a study that was published
3 in the Harvard Law Review not long ago. And the
4 conclusion that that came to was that there was simply
5 no correlation, there was no increase in voting based
6 on any feelings of the possibility of fraud or the
7 possibility that fraud would be addressed by voter ID.

8 MR. DAVIS: Do you think it might be a
9 more valid analysis to compare states with and without
10 photo ID requirements over a period spanning several
11 election cycles in the same -- or the same national
12 election cycle in order to determine the impacts of
13 voter ID?

14 MR. SKAGGS: I think it would. And I
15 think -- I'll echo an observation made by Dr. Moore
16 earlier this evening which is that it's a shame that
17 the empirical data is not there to the extent it could
18 be. And I think studies of the sort that you've just
19 described, Senator, would be very helpful in that
20 regard.

21 The one thing I would add to the sort of
22 proposed research that you talked about would be
23 factors such as candidate campaign mobilization, the
24 number of resources that were poured into the states.
25 I think the more variables that you can plug into

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1 these studies that look at issues that actually have
2 an impact on voters being mobilized, the more accurate
3 the data would be.

4 SEN. DAVIS: I want to ask you for a
5 moment about claims that are made that support the
6 argument for voter ID. I would like to hear your
7 thoughts on claims that are made by voter ID
8 supporters that suggest that thousands of dead people
9 or non-citizens are registering and possibly voting.

10 MR. SKAGGS: Well, we hear these sorts
11 of claims all the time. And what a detailed analysis
12 of these claims proves again and again and again is
13 that there is no "there" there. These are erroneous
14 reports. The biggest reason why we have these sorts
15 of claims and why they ultimately fail when they're
16 scrutinized is the data-matching that I talked about
17 earlier, the attempt to compare voter lists, list of
18 voters who cast ballots against lists of dead people
19 or felons, for example, that in many states are
20 disenfranchised.

21 And what we see again and again is that
22 initial data-matching comes up with huge numbers,
23 thousand of voters, and that when resources are
24 dedicated to actually going record-by-record and
25 case-by-case and match-by-match and investigating

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1 this, it ends up that virtually all these fall away.

2 One of the most well-known examples is
3 an article in the Atlanta Journal-Constitution that
4 came out with a huge dramatic headline that over 5,000
5 dead voters had voted in Georgia over a number of
6 years. And the specific example that was cited in
7 that article was a gentleman by the name of Allen J.
8 Mandel, M-a-n-d-e-l, who was deceased and who the
9 article claimed someone had definitely voted in his
10 name.

11 An investigation was conducted and it
12 turned out there was actually an Allen J. Mandell,
13 M-a-n-d-e-l-l -- two l's as opposed to one -- who was
14 very much alive and well, and he was actually the
15 gentleman that cast a vote, eligible citizen, no
16 wrongdoing at all.

17 But these sorts of claims, this 5,000
18 number was latched onto by elected officials,
19 advocates, partisans, and was repeatedly trumpeted.
20 And, of course, once the careful analysis is done and
21 once each of these cases is looked at and it turns out
22 that, in fact, there really is no problem, oftentimes
23 those reports and those studies don't get as much air
24 play.

25 SEN. DAVIS: You've mentioned the

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1 Indiana experience in your comments and in your
2 answers to my questions today. But even Appeals Judge
3 Posner, an outspoken conservative appointee, said in
4 his Opinion upholding the Indiana photo ID law -- and
5 I quote him -- "No doubt, most people who don't have
6 photo ID are low on the economic ladder and, thus, if
7 they do vote, are more likely to vote for Democratic
8 than Republican candidates. Thus, the new law injures
9 the Democratic Party by compelling the party to devote
10 resources to getting to the polls those of its
11 supporters who would otherwise be discouraged by the
12 new law from bothering to vote," end quote.

13 His comment seems to illustrate why
14 Republicans use voter fraud claims to justify vote
15 suppression activities that date back decades and that
16 continue today. Do you know of any evidence of
17 systematic voter fraud to contradict findings from
18 academic studies that suggests that the only real
19 reason for the photo ID push is to provide Republicans
20 a partisan advantage?

21 MR. SKAGGS: I don't. The answer would
22 be no. I don't pretend to understand why certain
23 folks would support theses policies. There's
24 certainly some obvious explanations of the sort that
25 you just gave. But I think Judge Posner was actually

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1 right in the selection that you read. I think where
2 he was wrong was when he went on later in the Opinion
3 to say, "And that's not a problem." That's where I
4 disagree with him.

5 And I don't disagree with Judge Posner,
6 because I think anything that hurts the Democrats
7 should be rejected. That's not why I disagree with
8 him. My fundamental disagreement is because there is
9 a certain cavalier attitude towards any sort of policy
10 that disenfranchises people as long as it's just a
11 small number of them. And I don't think 92 notes or
12 33 notes or 700 votes is an acceptable number of
13 voters to be disenfranchised, particularly when the
14 excuse for doing so just doesn't hold any water.

15 SEN. DAVIS: Thank you very much for
16 your testimony and your answer to my questions.

17 I have no more questions for this
18 witness, Mr. President.

19 SEN. DUNCAN: Thank you, Mr. Skaggs.
20 There are no other members queued up, so you are
21 excused. Thank you for your appearance here today.

22 MR. SKAGGS: Thank you, Mr. Chairman.

23 SEN. DUNCAN: The Chair calls Wes
24 Tailor.

25 Mr. Tailor, you have 10 minutes. Let me

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1 introduce your written testimony first. I've got an
2 Exhibit 25, which is the written testimony of Robert
3 Simms. Is that --

4 MR. TAILOR: Yes, sir. That's our
5 Deputy Secretary of State.

6 SEN. DUNCAN: Okay. Would you
7 explain -- well, go ahead and state your name and who
8 you represent.

9 MR. TAILOR: Yes, sir. My name is Wes
10 Tailor. I am the Elections Director for the State of
11 Georgia, and I was appointed to that position by the
12 Secretary of State.

13 SEN. DUNCAN: And you have given us
14 Exhibit 23 -- or 25, rather -- as the written
15 testimony of Robert Simms, the Georgia Deputy
16 Secretary of State, before the United States Committee
17 on Rules and Administration. We'll submit that to the
18 record.

19 (Exhibit No. 25 marked and admitted)

20 **TESTIMONY BY ROBERT A. SIMMS (SUBMITTED BY WES TAILOR)**

21 MR. TAILOR: Thank you.

22 Well, thank you-all very much for having
23 me in the great State of Texas. I will try not to
24 take up too much of your time. Obviously, I can't,
25 since I only have 10 minutes. But I did want to

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1 describe Georgia's experience with our photo ID law.
2 And, obviously, it is up to you as legislators in the
3 great State of Texas to decide whether that experience
4 in Georgia has application for the voters in Texas
5 while you consider this bill.

6 One of the things that you may want to
7 consider is that I am an actual elections
8 administrator. I have administered several elections
9 under a photo ID statute. In Georgia, prior to the
10 implementation of our photo ID law in August of 2007,
11 voters could use, actually much like this current
12 Texas bill, 17 forms of voter identification when they
13 were voting in person.

14 The current statute allows generally in
15 Georgia six forms of photo identification: A driver's
16 license, a U.S. passport, government employee photo
17 identification, a valid federal or state government
18 photo ID, a military photo ID or a tribal photo ID.

19 If a voter shows up at the polls, much
20 like has been discussed here, and they do not have one
21 of those appropriate forms of ID, they may cast a
22 provisional ballot and return within two days after
23 the election to verify their information or verify who
24 they are, at which point their ballot would be
25 counted.

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1 And I'm going to take issue right here
2 with the previous testimony talking about provisional
3 ballots and the allowance of provisional ballots and
4 the failure of people to then either return to the
5 registrar's office, as disenfranchisement. That is
6 not disenfranchisement. Those people -- everyone in
7 Georgia is allowed the ability to cast a vote.

8 Now, with the provisional ballots, under
9 federal statute, however a provisional ballot is cast,
10 there is an opportunity to then verify the individual
11 or verify the information. That's true in Georgia.
12 Those people were not disenfranchised; they were given
13 every opportunity to have their vote count. Now, why
14 they didn't return, we don't know yet. That is true.
15 But to say it's only because that they couldn't get a
16 ride, we don't know. They could have not been the
17 people that they said they were when they arrived at
18 the polls, but we don't know that at this point.

19 Now, the entire State of Georgia has
20 been set as a Section 5 state, and DOJ did pre-clear
21 our current statute. I will note, by the way, that
22 DOJ did pre-clear the broader statute which is more
23 akin to the current Texas Senate Bill, back early on,
24 well before 2006.

25 But let me tell you about Georgia's

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1 experience with the photo ID. The arguments that have
2 been raised are numerous, that in-person voter fraud
3 doesn't exist or it's not such a problem that you
4 should think to address it. Well, I can tell you, as
5 an elections official, that I take voter fraud very
6 seriously. I also take each and every person in
7 Georgia's ability to cast a vote very seriously. I
8 would equal and hold those two on equal footing.

9 And what we have found in the
10 administration of photo ID in Georgia is that it does
11 not disenfranchise voters, but it does serve as a true
12 barrier to voter fraud, an in-person voter fraud.
13 Another argument that I've heard is that it will place
14 an undue burden on however many people folks have come
15 up with. In the litigation in Georgia, it was
16 hundreds of thousands of individuals and you've heard,
17 and so I won't go over and belabor that after four
18 years of litigation, the most prominent lawyers in
19 Georgia, one being a former governor, failed to find
20 even one single individual who was unduly burdened by
21 Georgia's photo ID statute. We've conducted 15
22 elections with photo ID. Georgia voters have cast
23 more than nine and a half million ballots under photo
24 ID, without a single issue or problem.

25 Looking at the 2008 General Election, we

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1 had, as has been stated, the highest turnout we've
2 ever seen, and it was about 700,000 more votes cast in
3 2008 than ever before in Georgia. By registration
4 deadline, we had 550,000 new voter registration
5 applications in 2008, as compared to 480,000 in 2004.

6 You heard that during the presidential
7 prejudices primary, we had more than one million
8 votes -- or I'm sorry -- 2.2 million votes cast in the
9 presidential preference primary, which was more than a
10 million than we had ever had cast in the presidential
11 preference primary before, with photo ID requirement
12 in place.

13 What's really interesting is that
14 100,000 more ballots were cast for the Democratic
15 candidates than for the Republican candidates. For
16 the General Election, Georgia has the option to mail
17 in ballots without a photo ID or to show up in person
18 with a photo ID. 92 percent of Georgians decided,
19 elected, chose to show up in person with a photo ID
20 when they had the choice not to do so.

21 Another argument I've heard today is
22 that photo ID requirements place an undue burden on
23 minority and elderly voters, and I've also heard that
24 it places an undue burden on female voters. Well,
25 I've heard all the reasons why you should discount the

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1 statistics, but let me just give you what Georgia saw,
2 based on 2004 to 2008.

3 Hispanic Latino votes cast went up by
4 140 percent from 2004 to 2008 in Georgia, with photo
5 ID. Black votes, African-American votes went up by
6 42 percent. The white vote went up by 8 percent.
7 Those casting votes who were 65 and older went up by
8 24 percent. And 65 and older voters still make up the
9 single largest category of voters in the State of
10 Georgia.

11 With respect to the increase in voting
12 between male and female voters, male voters, the votes
13 cast increased by about 17 percent, and female voters
14 went up by 18 percent. So at least on the face of the
15 votes and the number of votes cast with photo ID and
16 without, there was no correlation with a suppression
17 of any votes.

18 The other argument I've heard, that
19 photo ID is designed to favor one party over another.
20 And we'll tell you that in Georgia, we do not register
21 by party. As I said, in the 2008 presidential
22 preference primary, almost 100,000 more ballots were
23 cast for the Democratic primary than the Republican
24 primary. In the General Election, Sen. McCain did
25 receive a majority of the votes for president.

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1 However, Georgia's sitting Republican incumbent
2 senator was forced into a runoff with his Democratic
3 opponent very close behind in the vote totals.

4 At least from those figures, there does
5 not appear to be a favoritism of one party over
6 another with the photo ID requirement. I can tell you
7 that Georgia's experience statewide shows that common
8 sense voter ID requirements are needed and do not
9 unduly burden voters. The arguments against that have
10 been stated here by certain groups do not appear and
11 still do not have any basis in fact and are pure
12 hyperbole and empty rhetoric and are not seen by
13 actual elections administrators on the ground.

14 Thank you.

15 SEN. DUNCAN: Thank you, Mr. Tailor.
16 There are no members queued up for questions. I
17 appreciate your testimony.

18 MR. TAILOR: Thank you.

19 SEN. DUNCAN: The next witness will be
20 J. Gerald Hebert.

21 Mr. Hebert, if you will approach. And
22 do you have written testimony? You do?

23 And just for the record, Exhibit 26 is
24 the written testimony of J. Gerald Hebert and will be
25 submitted to the record.

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1 (Exhibit No. 26 marked and admitted)

2 SEN. DUNCAN: Go ahead and state your
3 name and who you represent. And you have 10 minutes.

4 **TESTIMONY BY J. GERALD HEBERT**

5 MR. HEBERT: My name is Joe Hebert, and
6 I'm a voting rights attorney. I'm also Executive
7 Director and Director of Litigation at the campaign
8 legal center. Today I am here representing myself.
9 I've spent over 20 years at the U. S.
10 Department of Justice as a federal prosecutor of
11 voting rights cases. I've taught courses on voting
12 rights at Georgetown Law School and University of
13 Virginia, among other schools.

14 But I want to start my testimony today a
15 little different than most of the other witnesses.
16 I'm going to start by making clear what I think is
17 really going on here with the Texas voter ID bill.
18 You see, this is just the latest in a series of
19 measures taken by Texas Republicans in the state to
20 harm voters within their own state, particularly
21 minority voters being the real targets. And it was
22 just a few years ago you enacted a redistricting
23 bill --

24 (Applause from the gallery)

25 SEN. DUNCAN: (Raps gavel)

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1 MR. HEBERT: -- that was aimed at --

2 SEN. DUNCAN: Just a minute, Mr. Hebert.

3 Any more outbursts, and the persons that
4 are participating in that will be asked to leave the
5 gallery. Thank you.

6 You can proceed.

7 MR. HEBERT: In 2003, there was a
8 redistricting bill that was needlessly passed that was
9 aimed at minimizing not only Democratic influence but
10 hurting minority voters. Republicans in the State of
11 Texas today, and particularly in the Senate, are using
12 their majority status to enact legislation that can't
13 be justified by urgency or need. Instead, it will
14 simply make it harder for hundreds of thousands
15 perhaps of Texans to vote.

16 They cast aside the bipartisan
17 legislative tradition or rule, the two-thirds rule, to
18 take up this issue so that they can ramrod the voter
19 ID bill down the throats of the minority. And they've
20 done so even though implementation of a photo ID bill
21 will cost the state millions of dollar. So you Texans
22 out there, that's where your tax dollars are going to
23 go, to defend the measure before the Department of
24 Justice and in the federal courts and then to
25 implement and approve -- and implement it and

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1 administer it if it ever is approved.

2 Now, I realize that saying these raw
3 partisan politics is largely motivating this is a
4 pretty serious charge, and so I'm going to take a few
5 minutes to tell you on what I base them. First of
6 all, understand that voter ID bills are of recent
7 vintage and they've only been enacted in states where
8 Republicans control the entire process in the state,
9 they control the Governor's chair, the Senate and the
10 House. That's where this has come up recently, And
11 it's not by accident. It's being considered in Texas,
12 as it was in those other states, without policy
13 substance. There simply is no widespread organized or
14 even occasional voter impersonation fraud in Texas
15 that will be addressed by this bill.

16 Now, I have personal experience with
17 this in Texas, because I filed a lawsuit against Greg
18 Abbott and the Secretary of State challenging their
19 assertions that there was a voter fraud epidemic here
20 in the state. And guess what? There isn't. I've
21 also led Attorney General Abbott to admit that persons
22 that he prosecuted for what he called in various press
23 releases an epidemic of voter fraud -- and they were,
24 by the way, with one exception all elderly black and
25 Latino political activists, and all of them were

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1 Democrats -- that they hadn't engaged in any fraud at
2 all whatsoever.

3 The particular type of voter fraud that
4 this legislation is purported to address, voter
5 impersonation, is virtually unheard of. There is
6 considerable evidence -- and you've heard it today --
7 that enacting a voter ID bill will create a series of
8 barriers that make it harder for senior citizens,
9 younger voters, poor people, people of color, women in
10 general, to exercise their right to vote.

11 Now, the fact is that most, if not all,
12 of these groups are growing as a percentage of Texas'
13 voting population, and most of them tend to vote
14 Democratic. So that skew tends to explain to me the
15 urgency of Republican leadership in pushing this bill.
16 This is about partisan politics and protecting
17 political power and marginalizing your opposition,
18 exactly what you did in the redistricting bill. And I
19 have personal experience with that as well, because I
20 was one of the lawyers who bought a suit against that
21 and took it to the Supreme Court where we did prove
22 that it discriminated against Latinos in South Texas.
23 That's what this is about.

24 Now, the Republican members of this
25 Senate and in the House, they can go ahead if they

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1 want to and choose to use their majority status to
2 waste Texas' tax dollars of hard-working Texans during
3 the short legislative session in this way. That's
4 their choice. They have that power.

5 But it's important to realize that the
6 path being taken and the methods used by Republicans
7 have ramification that extend beyond politics. What's
8 at stake is much bigger than a Republican majority
9 imposing its will on a Democratic majority.

10 The path and method in enacting the
11 photo ID bill is the latest in a long series of
12 relentless attacks on minority voters by this state,
13 which is covered by the Voting Rights Act, because you
14 have a long history of denying minority people the
15 right to vote. That's a simple fact.

16 Now, Texas, along with other deep south
17 states, has a long dark history of using voting as a
18 way to keep people on the reservation. Let me give
19 you, however, more recent examples than ancient
20 history involving the office of your current Attorney
21 General who has used his office to manufacture false
22 claims of voter fraud.

23 Take, for example, this: He created a
24 training manual about mail-in balloting to try to go
25 around and inform DAs about how to find voter fraud.

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1 And on one of his PowerPoint slides, he said, "Hey,
2 they use certain stamps to mail their ballots, these
3 fraudulent people." And he had a big picture of the
4 stamp, a sickle cell anemia stamp featuring a
5 prominent African-American woman holding her baby.
6 Boy, that's a real subtle indicator, isn't it, of
7 voter fraud and who is committing it.

8 He sent investigators from the Attorney
9 General's office -- get this! -- to peep into the
10 bathroom window of my client, an elderly African-
11 American woman in Fort Worth, when she was coming out
12 of the shower. And they were there to harass her
13 about whether or not she had helped her neighbors
14 vote. What a terrible thing to do, help your
15 neighbors to vote if they're shut in and disabled
16 people.

17 The Attorney General here was asked to
18 intervene to help the Prairie View students in Waller
19 County. In three years he did nothing. Repeatedly
20 meetings were asked with the Attorney General to ask
21 him to come in and help them. It took -- get this! --
22 the Bush Justice Department to use Waller County, to
23 step in after two years of inaction by the Attorney
24 General and protect the African-American students at
25 the university. Ancient history? No. 2008.

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1 Now, the cases that were brought against
2 elderly Latino and African-American women by
3 Mr. Abbott, in which he claimed were voter fraud, were
4 the following activities: They actually had the
5 audacity to go to their neighbors' homes, at the
6 neighbors' homes request, who are often very elderly
7 and disabled people, to pick up their mail-in ballot
8 that had already been sealed and drop it in the mail
9 to them.

10 Notice, I didn't say they marked the
11 ballot for them. Notice I didn't say that they
12 pressured the neighbor. They simply mailed a ballot,
13 and then they were prosecuted for vote fraud. Where
14 is the fraud? Kind of like the old commercial,
15 "Where's the beef?"

16 And when they stood up and filed a
17 lawsuit saying, "Hey, we weren't -- we didn't engage
18 in voter fraud," Greg Abbott's former Solicitor
19 General, Ted Cruz, put out a press release and said,
20 "Oh, none of their claims have any merit, because
21 they're all a bunch of criminals."

22 Just last week we find the Attorney
23 General's office failed to comply with a proper open
24 records request from Texas legislators who asked him
25 for records about voter impersonation fraud, the

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1 so-called target of this bill.

2 And then there is a glaring example --
3 and it's detailed in my testimony -- where you had
4 voter fraud apparently committed in Highland Park, a
5 very rich areas of Dallas, Texas, where, by the way,
6 George Bush and Dick Cheney lived before they went in
7 the White House, where Republicans engaged in voter
8 fraud and the Attorney General was asked to prosecute
9 and investigate by the DA in Dallas, and he failed to
10 do so. Explain that lack of even-handedness.

11 Now, these recent actions by the
12 Attorney General should serve as an important warning
13 to those of you who are going to vote on this
14 legislation. This hearing is a sham, just like your
15 redistricting public hearings were a sham. You said
16 you wanted to listen to the voters, and 90 percent of
17 Texans said, "Don't do redistricting." Did you
18 listen? No. You were hell bent on enacting Tom
19 DeLay's dirty work, because you couldn't stand up to
20 him and pass the bill.

21 Let me say, since I have only a few
22 minutes left, one minute left to say this: I can
23 assure you that as a former Justice Department
24 official, all of the actions that I just described,
25 along with your procedural departures from the norm,

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1 such as abolishing the two-thirds rule, not allowing
2 certain rules to be enforced, even though they're in
3 the Texas rules, as Sen. West said this morning, that
4 all of that will come back to haunt you, because those
5 are indicators under a decision called Arlington
6 Heights, in the Supreme Court that really what's going
7 on here is not about good government reform, this is a
8 measure that has as its root an illicit purpose. And
9 you-all ought to know a lot about that, because it's
10 been going on in Texas for a long time.

11 Thank you.

12 **QUESTIONS FROM SENATE FLOOR**

13 SEN. DUNCAN: The Chair recognizes
14 Sen. West.

15 SEN. WEST: Thank you very much,
16 Mr. Chairman.

17 Mr. Hebert, as it relates to
18 non-citizens, what about those who claim that
19 non-citizens are on the voters roll and will a voter
20 ID law for voting stop that?

21 MR. HEBERT: A photo ID bill will not
22 affect that whatsoever. Right now you don't have to
23 be a citizen to get a driver's license. Many people
24 who are non-citizens, if they end up on the rolls --
25 and this has been true in not only Texas, it's true in

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1 other states -- that they go to get a driver's license
2 and there is a -- in many places, you automatically
3 get put on the voter registration rolls if you check a
4 box that says, "Do you want this to double as a voter
5 registration application?" So they end up being on
6 the rolls.

7 Now, there is no indication in most
8 states that these people ever vote. But if they do,
9 it's usually because someone has given them -- you
10 know, they've gone to the polls and they've been given
11 a registration card. But it happens so rarely. The
12 photo ID bill wouldn't affect that at all, because
13 they get a photo ID.

14 SEN. WEST: You know, there's been some
15 questions raised about whether you need a photo ID to
16 get on an airplane or cash a check. What is the
17 answer to that question?

18 MR. HEBERT: You do not need a photo ID
19 to get on an airplane in this country. In fact, the
20 Department of Homeland Security's TSA office has
21 regulations that they've issued about this. If you go
22 to the airport and you don't have your picture ID,
23 they will pull you aside, put you in a room, ask you a
24 series of questions, make you sign a statement, and
25 then you will get on the plane. In fact, I believe

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1 Dr. Moore who testified earlier today did not have his
2 picture ID with him when he came down here, and he
3 went through that exact procedure.

4 SEN. WEST: No photo ID?

5 MR. HEBERT: Yes, no photo ID.

6 SEN. WEST: How does the legal --

7 MR. HEBERT: And he was who he said he
8 was, by the way, so he wasn't impersonating somebody
9 else.

10 SEN. WEST: Okay. How does the legal
11 standard that the Department of Justice will employ to
12 any Texas voter ID law differ from the legal standard
13 the Supreme Court used to decide the Indiana case?

14 MR. HEBERT: The Indiana case was a
15 constitutional challenge, what we call a facial
16 challenge to a statute. In a lawsuit like that -- it
17 didn't even involve race, by the way. I mean, we
18 haven't said that in all the debate today. But the
19 Indiana case, there was no allegations that the
20 Indiana bill violated the Voting Rights Act in the
21 Indiana case. Instead, it was a challenge that the
22 voter ID bill there burdened the fundamental right to
23 vote, in violation of the constitution.

24 It was challenged even before it went
25 into effect, so that's why I always find it amusing

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1 that people quote the Supreme Court that say, "They
2 couldn't produce a single case." Well, of course.
3 They hadn't had an election yet by the time the case
4 was brought to trial and the decision was made.

5 So the legal standard there is that you
6 have to prove that it's an unconstitutional burden on
7 the right to vote, fundamental right to vote. It's a
8 very high burden, because the state is given
9 considerable latitude when it comes to regulating
10 elections and voting.

11 In the Department of Justice proceeding,
12 the total focus is on race and ethnicity, something
13 that wasn't at issue in Indiana when the case went to
14 the Supreme Court. There the state, as was reported
15 earlier, bears the burden of demonstrating that
16 enacting a photo ID bill will not lead to a
17 retrogressive effect from minority voters in the state
18 and is not being enacted with a discriminatory
19 purpose.

20 SEN. WEST: So the Indiana case is not
21 really applicable to Texas?

22 MR. HEBERT: Not really. When it comes
23 to the Section 5 pre-clearance process, it really has
24 very little, if any, relevance.

25 SEN. WEST: Okay. Now, what relevance

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1 is it to obtaining Section 5 pre-clearance if the vast
2 majority of minority legislators vote against a
3 particular bill?

4 MR. HEBERT: Well, there is a Supreme
5 Court case on point now that's called Georgia vs.
6 Ashcroft where Georgia enacted a redistricting plan.
7 And virtually all but I believe one legislator voted
8 against the bill. And when the Legislature went for
9 pre-clearance, there were arguments made by
10 Republicans, actually, that the redistricting plan
11 violated the voting rights of minorities.

12 And the State of Georgia produced voting
13 records and statements from minority legislators
14 saying, "We support this redistricting plan. And the
15 Supreme Court, in fact, cited that as evidence that
16 there was not a retrogressive effect and that, in
17 fact, there was no discriminatory purpose.

18 SEN. WEST: Have you had a chance to
19 look at the draft of the bill that's being proposed?

20 MR. HEBERT: I have looked at it, yes.

21 SEN. WEST: In terms of direction for
22 this legislative body, can you kind of give us your
23 assessment of whether or not this, quote unquote,
24 voter ID bill is needed in the State of Texas?

25 MR. HEBERT: Well, I mean, I know that

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1 there are no cases -- in fact, I believe the Attorney
2 General's Deputy Attorney General testified just last
3 year that there were no proven cases of voter
4 impersonation fraud that would be addressed by the
5 photo ID bill. That was testimony that Mr. Eric
6 Nichols gave last year. I was at that hearing, by the
7 way, and I brought actually his statement, the news
8 articles that quoted him.

9 So I know that that kind of a problem --
10 this is a bill in search of a problem and doesn't
11 really -- in my mind doesn't really address a lot of
12 what is really voter fraud in Texas, which are things
13 like voter intimidation of minorities -- that's voter
14 fraud -- minorities who are being denied the right to
15 vote, because they're being intimidated and harassed
16 by people. That's voter fraud, and that ought to be
17 the kind of measure that ought to be enacted by the
18 Texas Legislature.

19 SEN. WEST: All right. Thank you very
20 much.

21 SEN. DUNCAN: Sen. Wentworth.

22 SEN. WENTWORTH: Welcome to Texas,
23 Mr. Hebert.

24 MR. HEBERT: Thank you, Senator.

25 SEN. WENTWORTH: Welcome back, I should

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1 say.

2 MR. HEBERT: Yes, sir.

3 SEN. WENTWORTH: I gathered from your
4 prepared remarks tonight you were critical and did not
5 approve of the Legislature's drawing of Congressional
6 districts in 2003?

7 MR. HEBERT: I did not. That's correct,
8 I did not approve of it.

9 SEN. WENTWORTH: Now, recognizing that
10 you don't live in Texas, you live in I guess either
11 Maryland or Virginia or Washington, D.C., you may not
12 know the answer to these questions and I don't expect
13 you to, but you might, because you're an expert in
14 redistricting matters and have represented folks in
15 redistricting matters in Texas.

16 Do you happen to know how many statewide
17 elected officials are in Texas?

18 MR. HEBERT: The total number I don't
19 know. I believe they're all Republicans.

20 SEN. WENTWORTH: There are 29, and
21 they're all Republicans and they've all been
22 Republicans for over a decade.

23 Do you remember offhand how many members
24 of Congress we had before the 2000 census?

25 MR. HEBERT: You had 30, I believe.

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1 SEN. WENTWORTH: Yes, sir, we had 30.

2 Do you remember the partisan division of those 30?

3 MR. HEBERT: It was two-thirds Democrat
4 at least. 21/9 I believe.

5 SEN. WENTWORTH: It wasn't quite that
6 bad; it wasn't quite. It was 17 Democrats and 13
7 Republicans.

8 MR. HEBERT: Prior to 2000?

9 SEN. WENTWORTH: Yes, sir.

10 MR. HEBERT: Okay.

11 SEN. WENTWORTH: And as a result of the
12 2000 census, Texas had two new congressional districts
13 added. So we went from 30 to 32. And as a result of
14 the redistricting that was done by federal court in
15 2001 and the election, it became 17 Democrats to 15
16 Republicans --

17 MR. HEBERT: I remember that.

18 SEN. WENTWORTH: -- in a state that had
19 29 statewide elected Republicans. We elected George
20 Bush governor, we re-elected George Bush governor, and
21 this state voted for George Bush as President of the
22 United States. And, yet, this state, even after 2002,
23 was still sending a Democratic majority congressional
24 delegation to Washington D.C., to fight President
25 Bush. And it didn't seem to those of us in the

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1 majority here that that was fair. And that,
2 Mr. Hebert, is why we re-drew the lines in 2003.

3 MR. HEBERT: Do you want me to comment
4 on that or are you --

5 SEN. WENTWORTH: Be pleased to have you
6 comment on it, yes, sir.

7 MR. HEBERT: I would just make two
8 points, Sen. Wentworth. One is that it is true that
9 Democrats controlled 17 of 32, as of 2003. But in
10 probably five of the districts that Democrats held --
11 for example, Ralph Hall, Max Sandlin, Jim Turner,
12 Charlie Stenholm, all Democrats -- in those districts,
13 the Republicans were winning. The statewide office-
14 holders you mentioned were carrying those districts,
15 including George Bush, as I recall.

16 So the people who were actually voting
17 in those districts, those five districts or so, were
18 actually splitting their tickets and maybe voting for
19 Republicans at the top of the ticket. But then when
20 it came to the congressional district, they liked the
21 fact that maybe Charlie Stenholm did support George
22 Bush a lot of the times, or Ralph Hall did, so they
23 ended up splitting their vote.

24 So even though it was 17 Democrats,
25 really the way the districts were drawn to my mind was

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1 really, a vast majority of them were drawn to skew in
2 favor of the Republicans. That is to say that they
3 roughly equated with the Republican share of the vote.

4 The second point I would make is that --
5 and a lot of Texans don't know this -- but as a result
6 of the redistricting in 2003, it is true that all the
7 people I just mentioned, except for Ralph Hall --
8 and I would add Martin Frost to the list -- all left
9 Congress.

10 There was a huge amount of tenure in
11 those people, and power in Washington is given out on
12 the basis of how long you've been there. So as a
13 result, Martin Frost was bounced out of Congress by
14 the map when he ran. Charlie Stenholm was. Martin
15 Frost would be Chairman of the Rules Committee today,
16 because Democrats control the House. Charlie
17 Stenholm would be Chairman of the Agriculture
18 Committee today, and Jim Turner would be Chairman of
19 the Homeland Security committee, very important
20 committees in Congress, all of whom are now gone
21 because of the redistricting that was done here in
22 2003. So it really ultimately -- and I know you
23 Texans don't really probably look on New York very
24 favorably, but the Rules Committee, that's now
25 headed by somebody from New York instead of somebody

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1 from Texas, as a result of just what I saw was a
2 partisan power grab in 2003. That would be my answer.

3 SEN. WENTWORTH: Well, let me give you a
4 little more history about Texas redistricting when
5 Democrats controlled the redistricting process. In
6 1971 when we had 25 members of Congress, 22 were
7 Democrats and only three were Republicans. And the
8 Democratic majority, after the 1970 census, looked at
9 those three Republicans and said, "How in the world do
10 we allow three Republicans to be elected from Texas?"

11 So they sent us out to eliminate those
12 three Republicans. The three back then were George
13 Bush from Houston, Jim Collins from Dallas and Bob
14 Price from Pampa. And as they were drawing the lines,
15 they realized too many Texans in Houston were voting
16 Republican, so they couldn't get rid of George Bush.
17 And they realized too many Texans were voting
18 Republican in Dallas and they couldn't get rid of Jim
19 Collins.

20 But they looked out to the Panhandle and
21 realized that Bob Price from Pampa had his
22 congressional district right next to Wichita Falls,
23 which had as its congressman a Democrat, Graham
24 Purcell, who chaired the House Agriculture Committee.
25 And so the Democratic majority in the Legislature

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1 decided that those farmers and ranchers in West Texas
2 would vote for the Chairman of the House Ag Committee,
3 so they paired, intentionally paired those two
4 congressmen to run against each other.

5 But the voters got to vote, and they
6 voted for Bob Price and defeated the Chairman of the
7 House Agriculture Committee. Thirty years later when
8 my party was in control, one of the congressmen that
9 you failed to mention was targeted for defeat, but he
10 wasn't defeated. Chet Edwards from Waco was reelected
11 even though he was supposed to lose.

12 So, fortunately, voters had the final
13 say. And in my judgment, both parties have been
14 guilty of doing things that they probably shouldn't
15 have been doing.

16 I appreciate you being here.

17 MR. HEBERT: Thank you. Thank you,
18 Senator.

19 SEN. DUNCAN: Senator Hegar.

20 SEN. HEGAR: Thank you, Mr. Chairman.

21 Thank you, Mr. Hebert, for being here.

22 I can tell you're very passionate, and definitely we
23 appreciate that. So I appreciate you being here and
24 stating everything that you have.

25 I had just a couple of questions as I

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1 was listening to your testimony. One, I was curious
2 on the issue of voter fraud allegations in Highland
3 Park that you mentioned. And I just wanted to make
4 sure that you were aware that Craig Watkins, the
5 Criminal District Attorney, sent a letter to our
6 Attorney General on March 14th of '07, formally
7 thanking for the investigation, yet also declining to
8 pursue any prosecution in that case. And I just
9 wanted to make sure that you were obviously aware of
10 that; so, therefore, the decision was back in the
11 local jurisdiction not to pursue that prosecution.

12 And if you would like to comment on
13 that, please.

14 MR. HEBERT: I am aware that the
15 District Attorney did decline himself to do it.
16 Oftentimes when a local DA makes a decision like that,
17 it's not based, obviously, on whether or not he or she
18 thinks there is voter fraud that has taken place. But
19 in any event, you know, they often defer to the
20 Attorney General who has far greater resources for
21 prosecuting such cases than the locals do.

22 I would have to talk to Mr. Watkins and
23 find out precisely what reasons he gave.

24 SEN. HEGAR: Right. And I just wanted
25 to make sure that we're all able to understand that

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1 there was decisionmaking going on in the local
2 jurisdiction as to how to pursue this matter as well,
3 so it's not just a one-sided street, and make sure
4 that everybody knows that. And hopefully we can
5 figure out some further discussions on that, because I
6 don't know the exact facts on it either.

7 Another thing I was curious, you
8 mentioned, I guess it was your client, with the window
9 of the bathroom. Now, I've heard that story before
10 and so I wanted some clarification on that, because
11 since that was your client, you can obviously be the
12 person to tell me this, since I've heard this story
13 before.

14 This situation -- and I wanted to make
15 sure this is the right one -- where people come to the
16 door but the home of the front door is also adjacent
17 to the window. The window is right immediately next
18 door to the door. And so, therefore, when anybody is
19 standing at the front door, the lady was going to see
20 them outside her bathroom window, because it's
21 immediately adjacent to the door. And so somebody was
22 not necessarily going around the fence, over the
23 fence, back through the back of the yard.

24 MR. HEBERT: Well, they were --

25 SEN. HEGAR: Is that the structure?

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1 I've heard that story before, and I just wanted to
2 make sure, since you were here, I could find out the
3 real facts.

4 MR. HEBERT: Well, you've got a pretty
5 good handle on it, but let me just give you a little
6 bit more --

7 SEN. HEGAR: Please; please.

8 MR. HEBERT: -- facts. Two
9 investigators come up from the Attorney General's
10 office to interview Gloria Meeks, elderly African-
11 American woman. She's in the shower. And as I recall
12 her home -- and I haven't been there in a number of
13 years now -- but you walked up to the front door which
14 is, say, right in front of you here. On the porch,
15 down a little bit down from there is a window that
16 does go into the bathroom, and the investigators went
17 into the window first. They didn't knock on the door
18 first; they went into the window first, which just
19 struck me as pretty unusual, because there was
20 actually somebody there in her living room waiting to
21 drive her to the doctor. And when --

22 SEN. HEGAR: How far is the window from
23 the front door?

24 MR. HEBERT: Several feet --

25 SEN. HEGAR: Okay.

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1 MR. HEBERT: -- a couple of feet.

2 SEN. HEGAR: Okay.

3 MR. HEBERT: But the guest, who was her
4 driver taking her -- you know, giving her a lift to
5 the doctor, I think it was, heard her yell and scream
6 that there was somebody looking at her while she was
7 getting out of the shower. And it turns out it was
8 the Attorney General's investigator.

9 SEN. HEGAR: You know, I would probably
10 scream, too, if y'all were on either side of the
11 window, I can imagine. I just wanted to make sure
12 everybody understood, if I heard the story correctly.
13 It was very close proximity, and I don't know how
14 anybody walked in the yard.

15 MR. HEBERT: Well, yes.

16 SEN. HEGAR: Obviously, I can understand
17 how that happened. And it would disturb me very much
18 so if someone would go around to the back of the house
19 and peep in windows, which is extremely a long ways
20 off. And I just wanted to make sure we understood the
21 context.

22 MR. HEBERT: Well, the explanation by
23 the investigators was almost as bad as the offense,
24 because when she protested to them, they said, "Oh,
25 I'm sorry. We thought we were looking in your kitchen

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1 window." So I don't know that investigators --

2 SEN. HEGAR: I imagine they figured out
3 pretty quickly that wasn't a kitchen window.

4 MR. HEBERT: Yes, they did.

5 SEN. HEGAR: At least I hope so.

6 MR. HEBERT: I think the door is the
7 best place to start.

8 SEN. HEGAR: Let me ask, if you don't
9 mind, allegations that are sent to the Attorney
10 General for prosecution -- in other words, they don't
11 go out and seek prosecutions; people send that to
12 them -- and I was curious, you had mentioned about the
13 lawsuit that you had against the Attorney General, and
14 I was curious. How did that end?

15 MR. HEBERT: We ended up filing a
16 stipulated dismissal where the Attorney General agreed
17 to modify his prosecution policies in how he would
18 prosecute cases, particularly cases where the only
19 offense was the hyper-technical violation, if you
20 will, of failing to sign the mail-in envelope --

21 SEN. HEGAR: Okay.

22 MR. HEBERT: -- which was really
23 important, because that's what most of our clients
24 have been investigated or prosecuted for.

25 SEN. HEGAR: And so there was something

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1 entered into the record at the court, and it actually
2 did not go to trial, but there was some settlement
3 prior to, and I guess you had prayer for five or six
4 different issues for relief. But it was really just
5 an issue put into the record for this one narrow
6 aspect that you were asking for. Is that correct?

7 MR. HEBERT: Right. All the rest of the
8 case we agreed to dismiss our challenges -- similar to
9 Indiana, challenges to the fundamental right to vote
10 of various mail-in ballot --

11 SEN. HEGAR: Was there an admission on
12 the that the state was violating some statute?

13 MR. HEBERT: No, no.

14 SEN. HEGAR: Okay.

15 MR. HEBERT: If you're going to settle a
16 case, you're not going to make the other side -- you
17 know, let you rub their nose in anything.

18 SEN. HEGAR: Okay. Well, let's hope
19 not, but sometimes those things happen. So anyway,
20 everybody just walked away, and there were some
21 changes, technical changes to the manual and that was
22 the end of that case?

23 MR. HEBERT: Well, they agreed to
24 redesign the ballot envelope for the mail-in ballots,
25 because the problem was that, as you probably know, in

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1 a mail-in ballot, there was no place for a person who
2 simply mailed the ballot, to sign it. You could sign
3 it if you were a witness and you could sign it if you
4 provided assistance. But there was no place, if you
5 simply mailed it.

6 So we agreed to work with the SOS to
7 modify that and also to change one other procedure in
8 Texas, and talked with them about, you know, better
9 ways to do that.

10 SEN. HEGAR: Okay. Well, good. I just
11 wanted to make sure I had that. And then one other
12 thing, since you brought up Waller County, and Waller
13 County is a little near and dear to me, since I'm a
14 lifelong resident of Waller County. And I wanted to
15 make sure that I understood exactly what you're
16 talking about when you were talking about Waller
17 County, if that was in regards to voter eligibility of
18 students at Prairie View campus several years back and
19 to make sure that -- I think Sen. Ellis had asked for
20 back then in maybe '04, if I remember correctly, for
21 some kind of statement to clearly state from the
22 Attorney General what the definition of the law was
23 and that people who reside in a county, intend to
24 reside there, they do reside there, they're eligible
25 to vote. And that was clearly demonstrated in the

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1 Opinion that was given to Sen. Ellis at that time. Is
2 that the situation that you were talking about?

3 MR. HEBERT: The situation in Waller
4 County for Prairie View students has been going on, as
5 you correctly point out --

6 SEN. HEGAR: Trust me. I've lived there
7 all my life.

8 MR. HEBERT: Okay. -- at least since
9 2004. The issue that I became involved in, and I
10 represented several of the Prairie View students, was
11 last year where a number of them were being denied the
12 right to become deputy registrars, and they were being
13 denied to register voters without certain burdens
14 being put on them, like limits of how many
15 applications and so on.

16 And when we went to the Justice
17 Department, as a former official of the Justice
18 Department, I was able to go to the federal
19 prosecutors and say, "This is a violation of their
20 fundamental rights here, and it seems to be race-
21 based." And the Justice Department, to their
22 credit -- you know, I didn't give the Bush
23 Administration much credit for prosecuting voting
24 rights cases on behalf of African-Americans -- but
25 they stepped up and Waller County signed a

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1 comprehensive consent judgment in --

2 SEN. HEGAR: Very comprehensive.

3 MR. HEBERT: -- admitting violations.

4 And --

5 SEN. HEGAR: Well, I think the issue was
6 expanding the number of voting locations in the county
7 and trying to make sure everybody was tended to in
8 dealing with those issues.

9 MR. HEBERT: That was one issue. But I
10 think the remedy actually also extended to ensuring
11 that they would go on campus, the registration
12 officials --

13 SEN. HEGAR: Correct; correct.

14 MR. HEBERT: -- and talk --

15 SEN. HEGAR: Correct; correct.

16 MR. HEBERT: -- more with the students
17 rather than putting barriers up.

18 SEN. HEGAR: Correct; correct. And I
19 can just say this: If there is anything dealing with
20 the people that I represent in any of the district --
21 and I can tell you, especially with Waller County -- I
22 would appreciate, if you don't mind, calling me,
23 because I will get involved in any form or fashion,
24 because I want to make sure we don't have any issues
25 in the county whatsoever. So you have my pledge on

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1 that.

2 MR. HEBERT: Thank you.

3 SEN. HEGAR: Thank you very much.

4 MR. HEBERT: Thank you, Senator.

5 SEN. DUNCAN: The Chair recognizes
6 Sen. Shapleigh.

7 SEN. SHAPLEIGH: Thank you, Mr. Chair.

8 Mr. Hebert, we've discussed since the
9 evening started the summary of the Attorney General's
10 investigation and prosecution of some of these cases
11 which he characterized in his March press release as
12 an "epidemic of fraud." Can you give us an overview
13 of how many cases were brought, how many were actually
14 indicted and who actually was involved in the
15 indictments?

16 MR. HEBERT: Well, there have been about
17 30 cases brought, as I understand it, by the Attorney
18 General over the last few years since he launched this
19 voter fraud project initiative, about 30 cases. My
20 recollection is, there were roughly 50 people involved
21 in these cases. I may have that part wrong, but
22 that's sticking in my mind. For the most part, they
23 were issuing involving mail-in balloting, these 30
24 case. They were not cases -- and not a single
25 instance that I can remember involved voted

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1 impersonation of somebody pretending, at the polls, to
2 be somebody else.

3 SEN. SHAPLEIGH: How many of these
4 individuals that were indicted were minorities?

5 MR. HEBERT: I don't really have a hard
6 figure on that. What I do know is that of the people
7 who were prosecuted for simply mailing the ballot of
8 other people, there were I believe 13 of those, and 12
9 of them were Latinos or Hispanics or African-
10 Americans, and all 13 were Democrats. By and large, I
11 don't know of any Republicans in those 30 cases that
12 have been defendants or indictees.

13 SEN. SHAPLEIGH: Now, these names I
14 think people here on this floor know, or some of us.
15 Willie Ray, who I think lives in Sen. Eltife's
16 district.

17 MR. HEBERT: Willie Ray was my client.

18 SEN. SHAPLEIGH: City Councilwoman, 69
19 years old, African-American from Texarkana. Walter
20 Hinojosa, retired school teacher and labor organizer
21 from here in Austin. What was the crime of these
22 individuals? What were they charged with?

23 MR. HEBERT: Well, Mr. Hinojosa was
24 never charged with a crime. He was a plaintiff in the
25 lawsuit, and he was one of my clients.

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1 Ms. Ray was charged with mailing --
2 possessing ballots of other people. And what was
3 described in the case, the indictment, and what was
4 described in our lawsuit was that she had gone to
5 several shut-ins and taken their ballots and dropped
6 them in the mail for them, and sometimes put a stamp
7 on it, because they didn't have the money for a stamp.

8 SEN. SHAPLEIGH: And so what's the
9 alleged violation of the law in that act?

10 MR. HEBERT: Possessing the ballot of
11 another person and not putting your name on the
12 carrier envelope.

13 SEN. SHAPLEIGH: And that was what she
14 was prosecuted for?

15 MR. HEBERT: That's correct.

16 SEN. SHAPLEIGH: Thank you.

17 SEN. DUNCAN: Sen. Williams.

18 SEN. WILLIAMS: Thank you, Mr. Chairman.
19 Is it Mr. "A-bear" or Mr. "He-bert"?

20 MR. HEBERT: In Louisiana it's "A-bear."
21 In Texas it's "He-bert."

22 SEN. WILLIAMS: Well, we're in Texas, so
23 you'll be "He-bert" then, I guess, although I have
24 some "A-bears" in my district and it's in Texas. So I
25 just wanted to be sure I had it right.

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1 Mr. Hebert, I would like to go back to
2 the Texas redistricting, because my recollection is
3 that you represented the Democrats when we did the
4 2003 congressional redistricting. Is my memory
5 correct about that?

6 MR. HEBERT: That is correct.

7 SEN. WILLIAMS: And would it be fair to
8 say that in the -- I'm not an attorney. So, I mean,
9 I'm going to kind of try to summarize this in
10 non-legal language. But my recollection is that the
11 basic argument you had was that it was
12 unconstitutional for us to draw a map that reflected
13 the majority voting patterns that Sen. Wentworth
14 referenced, that we had to protect those incumbent
15 Democrats. Is that the gist of the argument that you
16 had, it was unconstitutional, what we were trying to
17 do to redraw this map so that it reflected the
18 majority will of the state?

19 MR. HEBERT: No, that was not the claim.

20 SEN. WILLIAMS: What was it, then?

21 MR. HEBERT: We had a partisan
22 gerrymandering claim as one of the claims in the
23 lawsuit, which was the allegation that a mid-decade
24 redistricting that was being undertaken solely for the
25 purpose of achieving partisan gain -- that is, to

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1 replace Democratic officeholders with Republican
2 officeholders in some districts -- that that was a
3 violation of the 14th Amendment's prohibition on
4 partisan gerrymandering.

5 SEN. WILLIAMS: And I think we're saying
6 the same thing. You're just phrasing it a little
7 differently than I would. And then in Pennsylvania,
8 you also represented the Democrats up there. But
9 wasn't the argument in Pennsylvania that it was
10 unconstitutional to have a congressional map that
11 didn't reflect the will of the majority there?

12 MR. HEBERT: No. First, I did not
13 represent the plaintiffs in the Pennsylvania case. I
14 was not involved in that lawsuit as one of the
15 attorneys. The claim there was a similar partisan
16 gerrymandering claim, but it did not include the
17 mid-decade aspect of it, which we in Texas took the
18 position that when you do redistricting in mid-decade
19 and you're replacing a perfectly valid map with
20 another map, that that creates a presumption that
21 you're doing it for partisan purposes, because why
22 else would you do redistricting twice? Most
23 legislatures don't like to even do it once.

24 SEN. WILLIAMS: And you mentioned
25 earlier your association with Martin Frost. Have you

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1 represented him? Are you friend with him? Can you
2 tell me a little bit more about what your relationship
3 with him is?

4 MR. HEBERT: Martin Frost is a former
5 client of mine. I would consider Martin Frost a
6 friend. I went to his wife's funeral two years ago.
7 I don't socialize with Martin Frost.

8 SEN. WILLIAMS: I'm sorry. Could you
9 repeat -- I missed part of what you said. I think you
10 said he was a client of yours. And what did you say
11 after that?

12 MR. HEBERT: He was a former client of
13 mine.

14 SEN. WILLIAMS: I see.

15 MR. HEBERT: I said I would consider him
16 a friend, but I don't socialize with him. I haven't
17 seen him in a couple of years, probably in person.
18 And I think the last time I saw him was when I
19 attended -- I stand corrected. I saw him about two
20 months ago at a meeting at a law firm. But I think
21 the time before that was at his wife's funeral that I
22 attended.

23 SEN. WILLIAMS: And what about Eddie
24 Bernice Johnson, the African-American congresswoman,
25 have you ever represented her?

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1 MR. HEBERT: I have represented her in
2 the past, yes.

3 SEN. WILLIAMS: Okay. And during a
4 redistricting trial, isn't it true that she pointed
5 you out in open court from the witness stand and said
6 that you had been her attorney and that you had lied
7 to her and that you had stabbed her in the back and
8 that you had double-crossed her when she was your
9 client, because you wanted to curry favor with Martin
10 Frost and the Anglo Democrats with more political
11 power? Did that happen?

12 MR. HEBERT: She did make some
13 accusations in open court about me. I don't remember
14 that precise language. I thought, frankly, that she
15 made some of those allegations against Martin Frost.

16 SEN. WILLIAMS: So are you saying she
17 was lying?

18 MR. HEBERT: I will tell you that I did
19 not -- I never have lied to any client, including
20 Eddie Bernice --

21 SEN. WILLIAMS: That's not what I asked
22 you. I ask you, was she lying?

23 MR. HEBERT: If she said that I lied to
24 her, then she was not telling the truth.

25 SEN. WILLIAMS: Okay. And then one last

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1 thing. In 2003, is it true, the story that I've
2 heard, that we've got -- that you were caught on tape
3 stealing maps from the redistricting room? Couldn't
4 you be disbarred for that kind of activity?

5 MR. HEBERT: I will answer the second
6 part fist. Yes, you could be disbarred for that
7 activity. And I never stole any maps. I was never --

8 SEN. WILLIAMS: Well, I understand that
9 there is actually a videotape of you taking maps from
10 the redistricting room. Is that not -- that's not
11 true? Those videotapes don't exist?

12 MR. HEBERT: That is not true. I have
13 never seen such a tape, but I never took any maps from
14 any redistricting room.

15 SEN. WILLIAMS: Okay. Thank you.

16 SEN. DUNCAN: Members, it's 12 o'clock,
17 and the Court Reporter has been serving us well since
18 about 12:30. And we have a relief coming in at 12:00.
19 She's been going for two and a half hours straight
20 now. And so I'm going to --

21 SEN. LUCIO: Mr. President?

22 SEN. DUNCAN: -- ask the Committee --
23 Sen. Lucio?

24 SEN. LUCIO: I had asked you earlier --
25 I do have with me the correspondence from my Senate

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1 district, from the District Attorney there from
2 Hidalgo County. And I would ask at this time to be
3 able to present it to you and to each member of the
4 Committee of the Whole. It's addressed to the
5 Committee of the Whole.

6 SEN. DUNCAN: Well, certainly. Bring it
7 down and we will put an exhibit number on it. And it
8 will be Exhibit No. 27, and it's dated today. Is that
9 correct?

10 SEN. LUCIO: Yes, it's dated -- no.
11 Actually, it's dated March the 6th.

12 SEN. DUNCAN: Okay. And it's from whom?

13 SEN. LUCIO: It is from Rene Guerra,
14 Criminal District Attorney, Hidalgo County, Texas.

15 SEN. DUNCAN: All right. If you'll
16 bring that down, we'll submit that into the record as
17 Exhibit No. 27.

18 (Exhibit No. 27 marked and admitted)

19 SEN. LUCIO: Thank you, Mr. President,
20 and thank you, members.

21 SEN. DUNCAN: And members, with that, we
22 will take a 10-minute -- we'll stand at ease for 10
23 minutes, until 12:10 a.m., to give our court reporter
24 a break and I think do a transition there.

25 (Recess: 12:00 midnight to 12:17 a.m.)

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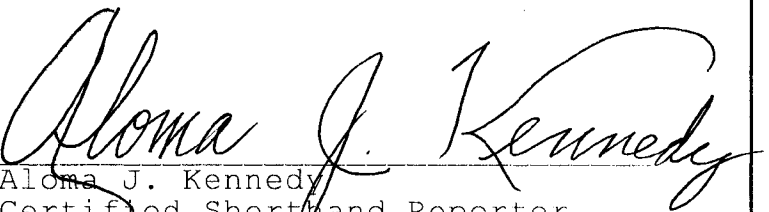
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COUNTY OF TRAVIS)

I, Aloma J. Kennedy, a Certified
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hereby certify that the above-mentioned matter
occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings
of such were reported by me or under my supervision,
later reduced to typewritten form under my supervision
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TRANSCRIPT OF PROCEEDINGS BEFORE
THE SENATE OF THE STATE OF TEXAS
EIGHTY-FIRST LEGISLATURE
(COMMITTEE OF THE WHOLE SENATE)
AUSTIN, TEXAS

IN RE: §
§
CONSIDERATION OF §
SENATE BILL 362 §

COMMITTEE OF THE WHOLE SENATE

WEDNESDAY, MARCH 11, 2009

BE IT REMEMBERED THAT AT 12:17 a.m., on
Wednesday, the 11th day of March 2009, the above-
entitled matter continued at the Texas State Capitol
Senate Chamber, Austin, Texas, before the Committee of
the Whole Senate; and the following proceedings were
reported by Kim Pence, a Certified Shorthand Reporter
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VOLUME 2

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1 P R O C E E D I N G S

2 WEDNESDAY, MARCH 11, 2009

3 (12:17 a.m.)

4 SEN. DUNCAN: The Committee of the Whole
5 will come back to order. Members, we -- our very
6 capable court reporter, Ms. Kennedy is -- we're doing
7 a transition, and we let her have the rest of the
8 night off.

9 And we have Kim Pence who is with us,
10 who will continue taking our testimony, and if --
11 we'll continue to observe that so that she can get a
12 good record.

13 The next person on the queue is
14 Sen. Zaffirini. Sen. Zaffirini, you are recognized.

15 SEN. ZAFFIRINI: Thank you,
16 Mr. President. And first, could we recognize the
17 court reporter who has been with us for 12 hours? She
18 certainly does deserve a round of applause.

19 (Applause)

20 SEN. ZAFFIRINI: Thank you.

21 **QUESTIONS FROM SENATE FLOOR (CONTINUED)**

22 SEN. ZAFFIRINI: Mr. Hebert, I know that
23 you have read the bill. Have you also read the fiscal
24 note?

25 MR. HEBERT: Yes, I have.

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1 SEN. ZAFFIRINI: And did you see that it
2 says that there would be no fiscal implications to the
3 State if this bill were passed?

4 MR. HEBERT: I did see that.

5 SEN. ZAFFIRINI: Do you believe that
6 fiscal note?

7 MR. HEBERT: While I accept it at face
8 value, I think it's preposterous.

9 SEN. ZAFFIRINI: Do you -- why do you
10 believe that that -- that if we pass the lot it will
11 cost the State millions of dollars, according to your
12 testimony?

13 MR. HEBERT: Well, I think it will cost
14 money because notwithstanding the fact there may some
15 line item in the Secretary of State's budget, I can't
16 believe that there's a line item that would cover the
17 cost of seeking pre-clearance and gathering all of the
18 data necessary, all the staff time to do that; and
19 then to go to the Justice Department, which is going
20 to have a very skeptical eye about this bill.
21 Remember, they recommended -- the career staff
22 recommended that the Georgia map be blocked. And if
23 you read their memo, which is now a matter of public
24 record, there was -- I think there was like 55
25 single-spaced pages of all of the data that they

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1 forced the State of Georgia to come up with. And even
2 in the end of having them produce all that data,
3 Georgia still couldn't get pre-clearance from the
4 career people.

5 The process as it turns out, we now
6 know, is somewhat corrupt there, but I think the Texas
7 bill could very well suffer the same effects, not to
8 mention all the time, of course, the State is taking
9 to enact the bill; and then, of course, ultimately if
10 it does get approved, to defend it in court for the
11 inevitable legal challenge that will follow; and then,
12 of course, administering and implementing the bill at
13 the local level, it requires extensive training of
14 local Election Officials to ensure that they know how
15 to administer a very complicated set of identification
16 provisions.

17 SEN. ZAFFIRINI: And that is on Page 3
18 of your written testimony. You wrote "though
19 implementation of a photo ID bill will cost the State
20 of Texas millions of dollars to defend the measure
21 before the Department of Justice and in federal
22 courts, and then to implement and administer it if
23 ever approved." What do you think it would cost the
24 State to defend this lawsuit?

25 MR. HEBERT: Well, to defend the lawsuit

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1 if one is challenged and assuming the bill is enacted
2 exactly as it appears in the bill pending before you,
3 you know, to bring such a lawsuit and to challenge it,
4 I can tell you on the plaintiff's side costs a quarter
5 of a million dollars, at least on the plaintiff's
6 side. I suspect the defendants usually spend more.
7 So I would say, you know -- and it also depends
8 whether there's an appeal, which usually there is.
9 The more appeals there are, the more it costs. So
10 usually litigation of this nature costs like, you
11 know, probably half a million dollars is what -- is
12 what the bill is.

13 SEN. ZAFFIRINI: Okay. Thank you. On
14 Page 4 of your written testimony, you write that
15 "There is considerable evidence, however, that
16 enacting a Voter Photo ID bill will create a series of
17 barriers making it harder for senior citizens, younger
18 voters, poor people, people of color, and women in
19 general to exercise their right to vote." Precisely
20 what barriers are you talking about?

21 MR. HEBERT: Well, as Ms. Wang testified
22 earlier, you and I may have IDs in our pockets, in our
23 purses, but poor people don't oftentimes have those.
24 And the burdens and barriers that they face are that
25 they have -- if they don't have a photo ID now, and we

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1 now know that there are thousands of Texans who vote
2 and don't have a photo ID, that they're going to now
3 presumably have to get one or make sure that they
4 carry around these two other methods of identification
5 with them. So that's -- you know, we're putting up --
6 we're putting up conditions on people exercising the
7 fundamental right to vote. We're putting the burden
8 on them to do more than just show up at the polls and
9 vote.

10 You know, I heard earlier, for example,
11 I think it was Sen. Fraser say, you know, to
12 Sen. Davis, you know, when Wendy Davis goes the polls
13 and votes, I want to make sure that, you know, it is
14 Wendy Davis. And the fact is that we don't really
15 have any examples right now of where somebody is
16 showing up pretending to be Wendy Davis who is not
17 Wendy Davis.

18 And so when you don't have a lot of
19 those situations happening, forcing people to have a
20 photo ID when it really isn't going to accomplish --
21 the kind of alleged fraud that exists, it really, I
22 think, ends up putting people in a burdensome
23 situation where they have to then go out and do
24 something to get the right documentation.

25 And I think that -- you know, in

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1 Georgia, I mean, there were -- I believe I saw a
2 statistic in the Houston Chronicle this morning that
3 there were roughly -- I think it was like a little
4 over a thousand, I think it was 1100 voters who had to
5 vote a provisional ballot in Georgia in 2008 because
6 they didn't have the requisite photo ID. And of that
7 number, I believe only 300 came back after the
8 election and produced within 48 hours the necessary
9 documentation.

10 Once the election is over, there's not
11 as much incentive for people to come back and do
12 whatever it is they need to do to validate their vote.

13 SEN. ZAFFIRINI: Thank you. Isn't it
14 interesting that every minority member of the Texas
15 Senate, every Hispanic and the two African-Americans,
16 oppose the effort to re-redistrict, as I'd like to
17 call it, and today every minority member of the Texas
18 Senate, the two African-Americans and every
19 Hispanic-American in the Texas Senate, oppose this
20 bill. Some coincidence, wouldn't you say?

21 MR. HEBERT: I would say not very
22 coincidental at all actually. I think it's
23 understandable given the ultimate impacts of what I
24 see the two bills having.

25 SEN. ZAFFIRINI: Mr. Hebert, you heard

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1 my question to Sen. Fraser asking him why he included
2 documentation of a sex change as proof of
3 identification. He said in response that he would
4 punt to the House author of the bill considered in
5 2007. Can you explain to us why that language would
6 be in the bill?

7 MR. HEBERT: No. I mean, it's -- you
8 know, I don't really know about a lot of the documents
9 on that list of things you can produce, why producing
10 two of those documents is, you know, a reliable way of
11 proving who you are. For example, we won't allow
12 people now, if this bill goes into effect, to use
13 their voter ID card, their voter registration card,
14 when they show up even if their name is on the books
15 and their card matches that name, but we'll allow them
16 to use a court record from a sex change operation and
17 a library card to vote.

18 Now, you know, the last time I checked a
19 library card to me doesn't seem to be as reliable as a
20 government-issued voter registration card. So, you
21 know, there's some real questionable things like that
22 in the bill. Sen. Duncan -- I mean, Sen. Fraser would
23 probably know why he put it in there, but for the life
24 of me -- I haven't seen that in a bill before I have
25 to say.

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1 SEN. ZAFFIRINI: You haven't?

2 MR. HEBERT: No.

3 SEN. ZAFFIRINI: Thank you very much.

4 Thank you.

5 MR. HEBERT: Thank you.

6 SEN. DUNCAN: The Chair recognizes

7 Sen. Gallegos.

8 SEN. GALLEGOS: Thank you, Mr. Chairman.

9 Gerry, let me ask you going back on redistricting and
10 let's go to those states that have enacted -- well,
11 let's go to the states that have enacted photo ID
12 laws. Some of those states I understand were red
13 states and all of a sudden they turned to blue. And
14 it's my understanding that in a lot of those states
15 the Latino population has surged. Is that -- is that
16 your understanding?

17 MR. HEBERT: Well, the Latino population
18 is surging in Georgia. I wouldn't describe Georgia as
19 a state that's gone from red to blue.

20 SEN. GALLEGOS: I understand, but
21 Indiana --

22 MR. HEBERT: I mean, I would -- Indiana
23 is no longer completely controlled by Republicans, I
24 don't think. So you have a situation there where
25 maybe they've gone from red to purple trending, you

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1 know, obviously in both of those states and in other
2 states that have considered voter ID, and I believe
3 it's now pending in the Utah legislature. Republicans
4 have controlled and had a monopoly on the entire state
5 government.

6 SEN. GALLEGOS: I guess what I'm trying
7 to ask you is that in these state that are all of a
8 sudden turning minority, what I would say minority,
9 the Latino population coupled with the
10 African-American population is outranking the Anglo
11 population in those states, and it's showing in the --
12 at the ballot box especially during this last
13 election. Would you -- would you agree?

14 MR. HEBERT: Well, certainly in Georgia
15 the Latino population has been growing substantially
16 in recent years. I'm not familiar that much with
17 Indiana's demographics as I am with Georgia's.

18 SEN. GALLEGOS: Well, let's just stay
19 with Indiana. You know, what we saw on CNN and some
20 of the other figures that we're seeing is there was a
21 tremendous increase in Latino votes in that state that
22 turned it -- a red state into a blue state. And what
23 I'm looking at here, Mr. Hebert, is that as these
24 states grow all of a sudden -- for example, Indiana,
25 as they grow into -- the population increased in the

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1 Latino community. Like Indiana all of a sudden, they
2 introduced and passed a voter ID bill, a photo -- a
3 voter ID bill. And I guess what I'm concerned is that
4 it's starting a pattern as where the Latino population
5 is increasing, that all of a sudden you have proposed
6 legislation on photo ID.

7 And now we're in Texas. Let me just
8 give you some early numbers that we've gotten before
9 we get into the census and before the Secretary of
10 Commerce approves numbers. The State of Texas in the
11 last ten years from 2000 to 2010 over 90 percent of
12 the Texas growth will be minority. There's an
13 indication of projected growth by 4 million in the
14 last ten years out of -- for 4 million. Out of those
15 4 million, 3,158,077 Hispanic, 3 million -- over
16 3 million of that 4 million is Hispanic. Now -- and
17 that's just projected. I think it's going to be
18 higher after the Secretary of Commerce confirms the
19 numbers.

20 Now, in Houston, we're looking at --
21 we're looking at a 1.1 -- in the last ten years -- in
22 the last ten years a 1.1 million increase in ten
23 years. Now, I'll tell you that the Secretary of
24 Commerce has not confirmed those numbers. I believe
25 that number will be 1.5 million.

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1 So what I'm getting at here and I'd like
2 you to answer is that all of a sudden we have a Latino
3 explosion population here -- which by the way, we
4 probably will get minimum three, probably maximum four
5 congressional districts in Texas, one for sure in
6 Houston and one for sure in Dallas. Now, the
7 others -- I don't know where the others go, and
8 probably additional Latino seats -- and I'm talking
9 about these will be Latino seats, additional Latino
10 seats in Houston, maybe two, and another extra Senate
11 seat -- another Senate seat belt for Dallas, Latino,
12 and probably four other State Rep seats in Houston,
13 Latino.

14 So my concern is looking at these
15 patterns all over the country with Latino explosion in
16 population, and all of a sudden voter ID legislation
17 in these areas, in these states, all of a sudden we
18 have an explosion like this. Oh, yeah, we'll take the
19 money from Washington after the census is taken and
20 those educational monies, those transportation monies,
21 education monies and healthcare monies, we'll take it,
22 we'll take it. But all of a sudden, we have a voter
23 ID bill that's on the table here before us. Because
24 of this Latino explosion, they know that we're going
25 to get these congressional districts, which is going

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1 to empower Latinos.

2 And in redistricting -- and I was there
3 with you. Troy Fraser was a co-chairman with me, and
4 I saw what happened. I saw what happened, this little
5 debate you had with Sen. Wentworth, I saw what
6 happened. Who really lost were the Latinos. They
7 were the ones that lost. They got cut up three ways
8 in Dallas. They tried to cut us up in Houston, and
9 they tried to cut us up in some other areas. What
10 they do is put us in areas to elect whoever and cut us
11 up and keep us -- and keep us separated. I saw that,
12 and you saw that.

13 So what I'm asking you is that this
14 pattern -- this pattern where Latino explosion
15 population and all that is do you see a pattern of
16 where that growth is? All of a sudden we want voter
17 ID, voter ID to suppress -- that's my guess -- is to
18 not only suppress our votes, but also try to suppress
19 our empowerment.

20 MR. HEBERT: Well, let me say that there
21 clearly is a surging Latino population in Texas and in
22 other states that have seen a photo ID bill go into
23 effect. And as I testified earlier, Sen. Gallegos,
24 the fact is that most, if not all, of the groups that
25 are going to be adversely affected -- and I'll single

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1 out Latinos because that's your question -- that they
2 are growing, and they are growing fast, and they are
3 growing as a percentage of the Texas voting
4 population, and they tend to skew Democratic, at least
5 now. And so that to me explains the urgency that
6 Republicans have in these states to enact a voter ID
7 bill.

8 SEN. GALLEGOS: Mr. Hebert, what I'm --
9 I mean, what I meant and really wanted your opinion is
10 that as this population grows and all this population
11 is coming to Texas, which obviously enriches us with
12 four more congressional seats, these other seats I
13 spoke about, plus the money that the census gives us
14 in those numbers -- what I'm saying is that Texas is
15 benefiting from that population increase, not only in
16 empowerment, but also in money.

17 And for some reason, like in Indiana
18 where the Latino population is increasing, Denver and
19 those other states that were red, now going blue, that
20 legislation is proposed or being proposed in these
21 states that all of a sudden are turning
22 minority/majority.

23 My concern is that Texas will take the
24 population increase, they'll take the empowerment,
25 they'll take the four congressional districts, they'll

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1 take the money from the census, yet they introduce a
2 bill to suppress the Latino and the minority
3 community. That's my concern on the pattern. So
4 wouldn't you agree with me or at least give me your
5 opinion that that's the type of pattern we're seeing?
6 Increase in Latino population? All of a sudden we've
7 got a suppression bill here. They might as well put
8 an amendment to suppress -- that this bill suppresses
9 all Latinos, the elderly and the African-Americans.
10 You might as well. That's what I see here. That's
11 the pattern I'm seeing. I just want your opinion.

12 MR. HEBERT: Well, my opinion is that
13 voter ID bills, including the one in Texas, are a part
14 of a pattern of suppressing minority votes, and that's
15 what this bill will do in my opinion, and I've
16 testified to that effect. And I agree with you that
17 the surging Latino population here will likely justify
18 the creation of additional Latino seats when
19 redistricting comes around. And it goes counter to
20 the fact that you have the Latino population growing
21 as fast as it is as a proportion of the state, and at
22 the same time that they're growing and giving benefits
23 to the State of Texas, as you point out, that we end
24 up with a photo ID bill that actually will target them
25 and suppress a lot of people's voting rights.

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1 SEN. GALLEGOS: Thank you for
2 your opinion, Gerry. Thank you.

3 SEN. DUNCAN: The Chair recognizes
4 Sen. Shapiro.

5 SEN. SHAPIRO: Thank you,
6 Mr. President -- Mr. Chairman and Members. I have a
7 couple of issues that I'd just like to visit with you
8 about, Mr. Hebert. I do remember very closely the
9 debate and the dialogue on redistricting and your role
10 in that. And certainly one of the issues that still
11 kind of gnaws at me is the idea -- and I just want a
12 yes or a no answer. I don't want anything else. Did
13 you take maps from the offices in this building during
14 redistricting? Yes or no?

15 MR. HEBERT: Yes.

16 SEN. SHAPIRO: Okay. That's all I
17 needed to hear. So you did take maps that were not
18 yours out of this building?

19 MR. HEBERT: Now you're adding more
20 facts. No, I did not take maps that were not mine. I
21 took my maps, or maybe my client's maps maybe.

22 SEN. SHAPIRO: Did you get permission to
23 take those maps, or did you just take them?

24 MR. HEBERT: The maps that I took I had
25 permission to have in my possession.

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1 SEN. SHAPIRO: And who gave you
2 permission to take those maps?

3 MR. HEBERT: My clients.

4 SEN. SHAPIRO: Your clients gave you
5 permission. Okay. So you did take maps?

6 MR. HEBERT: I did.

7 SEN. SHAPIRO: Okay. That's what I need
8 to know.

9 The second question I have is completely
10 different, and that is why do you believe the federal
11 government has rules in place, laws in place, that
12 actually say that when you go to an airport you must
13 have a photo ID?

14 MR. HEBERT: For security purposes.

15 SEN. SHAPIRO: For security purposes.
16 And you testified earlier that someone came through --
17 I'm sorry I don't remember who you said -- came
18 through, did not have to use their photo ID, went
19 back, was integrated, came back out and went through
20 as they did.

21 MR. HEBERT: Correct.

22 SEN. SHAPIRO: It's ironic because about
23 a week ago I was going through, as we all do so often,
24 and I happened to see a sign up right there at that
25 isle as you -- before you give your ID. And the note

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1 on the poster says "Why" -- with a question mark --
2 "Why do I have to show my ID? Identity matters. We
3 need to make sure your ID and your boarding pass
4 match." And it's signed Transportation Security
5 Administration.

6 These rules, these laws that are put in
7 place have exceptions, as you mentioned earlier, and
8 it seems to me the correlation between what this bill
9 is saying and what we are trying to do and what maybe
10 the federal government has done are very similar
11 because in essence it's the same methodology.

12 We have a law. We say we want you to
13 have a photo ID. You don't have it. In this
14 particular bill, it says here are the other options
15 that you can go through in order to qualify. I don't
16 think there's a whole lot of difference between the
17 two.

18 And I think that we're doing what you're
19 asked to do with a Sam's card. As we mentioned
20 earlier, I can't charge on my Cosco card unless my
21 picture is on it. Identity matters. I can't go to my
22 bank and cash a check or another bank without my photo
23 ID. Identity matters. I mean, you could go on and
24 on. The library books, identity matters.

25 And in this case, I think that's, in

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1 fact, what we're doing. Do you agree that identity
2 matters?

3 MR. HEBERT: I agree that identity
4 matters, but I disagree that what you're doing in this
5 bill is similar to what, say, the TSA is doing at the
6 airport.

7 SEN. SHAPIRO: Okay. The methodology is
8 the same. It may not be the same heightened awareness
9 or the same difficulty with security, but we happen to
10 believe that the integrity of the vote is just as
11 important and just as secure.

12 MR. HEBERT: I see the procedures as
13 being different at the airport than they are in
14 voting.

15 SEN. SHAPIRO: And how -- and how is
16 that?

17 MR. HEBERT: Well, for example, at the
18 airport when you go through security and you don't
19 have a picture ID, they pull you aside and they ask
20 you questions. And if they're satisfied, you can get
21 on, you get on.

22 SEN. SHAPIRO: That's what I just said.

23 MR. HEBERT: Well, the difference is
24 that in Texas if you go to show up at the polls and
25 you have a voter -- valid voter registration card

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1 under this bill and that's all the information you
2 have, you have to cast a provisional ballot, and
3 that's not going to get counted. So the difference is
4 that in one, you're getting on the plane, and in the
5 example of the voter ID, you're not getting on the
6 plane.

7 SEN. SHAPIRO: And you wouldn't have the
8 opportunity then to say "Here is my valid information.
9 Here is my check. Here is my electricity bill"? I
10 mean, there's a whole litany of things that you could
11 have with you at the same time that you went to go
12 vote.

13 MR. HEBERT: Right, but if you go to the
14 airport with nothing, you get to get on the plane if
15 you can establish, through questions, that you're not
16 a security risk. If you go to the polls with no ID
17 except for your voter card, you're not going to be
18 able to vote except for a provisional ballot, and
19 there's no procedure in the bill for how to rectify
20 that situation once your provisional ballot is
21 counted. 70 percent of the provisional ballots never
22 get counted.

23 SEN. SHAPIRO: Well, I think the issue
24 here is identity matters, and I think what we're
25 trying to do is just make sure that everybody's

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1 identity matches who they are. That's not -- that is
2 not out of line with about 25 other things that we do
3 currently under laws or procedures or rules that exist
4 throughout this country on lots of different issues.
5 It was just ironic that you mentioned the airport
6 because I just happen to have written that down while
7 I was at the airport. Thank you.

8 MR. HEBERT: Thank you. You know,
9 Sen. Shapiro, I own a restaurant, and we check IDs for
10 people who we think are underage drinking. And when I
11 went through the ABC training course, the alcoholic
12 beverage, and they showed me fake IDs, I could not
13 tell the difference between a valid driver's license
14 and a fake one. So I agree identity matters, but it's
15 often very difficult to base that decision on a photo
16 ID, including a driver's license.

17 SEN. DUNCAN: Mr. Hebert, there are no
18 other Members in queue to question you. So you are
19 free to leave.

20 MR. HEBERT: Thank you.

21 SEN. DUNCAN: Thank you.

22 Mr. Patrick, for what purpose --
23 Sen. Patrick?

24 SEN. PATRICK: I was going to ask
25 Mr. Hebert a question, but I don't think (inaudible).

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TESTIMONY BY THOMAS WHEELER

SEN. DUNCAN: Our next witness, Members,
is Thomas Wheeler. Mr. Wheeler, you have written
testimony that you've submitted. It will be
Exhibit 28, and it will be entered into the record.

(Exhibit No. 28 marked and admitted)

SEN. DUNCAN: If you'll state your name
and who you represent? You have ten minutes.

MR. WHEELER: Thank you, Mr. Chairman,
Members of the Committee. My name is Tom Wheeler. I
represent myself. I am the Chairman of the Indiana
State Election Commission. I have held that position
for the last five years.

The Indiana State Election Commission is
a bipartisan Commission, it is made up of two
Republicans and two Democrats, and as I mentioned I am
the Chair of the Commission. We share responsibility
for elections, campaign finance, candidate inquiries
and related matters with the Indiana Secretary of
State.

The document and the statement that has
been introduced as Exhibit 28 is a statement prepared
by the Indiana Secretary of State Todd Rokita, whose
name is -- it probably won't be unfamiliar to you for
those of you who have read the Crawford decision.

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1 I'm not going to engage in a polemic
2 here this evening. I know we're late at night, and a
3 lot of people are still behind us queued up ready to
4 speak. What I would like to do, though, is spend just
5 a couple of minutes telling you in Indiana how we got
6 to where we are and how well it has worked in Indiana.
7 I would not presume to lecture the legislators here
8 from the great State of Texas about how that's going
9 to work here. That's your job as elected officials.
10 But what I can do is tell you how -- why we
11 implemented what we did and how well it worked.

12 Let me take to you 2003, Lake County,
13 Indiana, City of East Chicago. Lake County, a pretty
14 industrial area just outside Chicago filled with steel
15 mills and industrial area. The situation is a
16 contested Democratic Primary race for the Mayor
17 of East Chicago. Mr. Pabey, the Police Chief, is
18 running against the long-time Mayor Mr. Pastrick.
19 Mr. Pastrick was actually filmed and documented in a
20 documentary called The King of Steel Town. For those
21 of you who are involved in the election-related issue,
22 it's a fairly fascinating documentary about how to
23 move forward with election fraud.

24 In this particular case, on election
25 day, May 6, 2003, Jose Torres walked into the Roberto

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1 Clemente Center in East Chicago. He signed his name.
2 He cast a vote in this hotly contested Democratic
3 Primary battle for Mayor. In fact, he was one of four
4 people, four family members from the same address who
5 also voted in that election.

6 The problem, Mr. Torres died on December
7 26, 1997 in the Chicago Hospital. Indeed his family
8 had moved out of East Chicago in 1998, yet they kept
9 voting, religiously going to the polls and voting up
10 to 2003. Interesting enough, Mayor Pastrick, the
11 individual who was running as Incumbent Mayor, was
12 actually a funeral home owner where Mr. Torres and
13 many other voters in East Chicago had been prepared
14 for burial.

15 The issue in this case, this was a hotly
16 contested election. It was in a Democratic Primary.
17 Very frankly, the Republicans had no idea that there
18 was any fraud going on. This was whistle blowing
19 between two Democratic candidates.

20 Mr. Pastrick, Mayor Pastrick, lost on
21 election day by 199 votes. He challenged that loss.
22 He alleged wide spread and systemic fraud by
23 Mr. Pabey. Mr. Pabey alleged the same by him. This
24 went to the Indiana Supreme Court. The Indiana
25 Supreme Court found, and I quote, "There was an

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1 occurrence of a deliberate series of actions that
2 perverted the voting process and compromised the
3 integrity and results of the election. In view of the
4 uncontested factual findings of the trial court, the
5 contestant established that a deliberate series of
6 actions occurred, making it impossible to determine
7 the candidate who received the highest number of legal
8 votes."

9 When our Supreme Court said to us the
10 fraud was so bad -- "We didn't just have dead people
11 voting. The fraud was so bad that we can't even
12 figure out who won this election, we're going to do it
13 over," that caught the attention of the people of the
14 State of Indiana and the General Assembly.

15 The second factor that caused us to look
16 at our -- look at photo ID as an option was the fact
17 that in Indiana we learned -- and this is set forth in
18 the statement of Secretary Rokita -- we learned that
19 voter registration rates in many of our counties
20 exceeded 100 percent of the estimated voting eligible
21 population. It was opined during the Pabey/Pastrick
22 matter that these excessive voter registration rates
23 encouraged precisely the kind of fraud that we saw
24 during the Pabey/Pastrick election and the subsequent
25 litigation.

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1 Taking those two together, the Indiana
2 General Assembly made a determination based upon the
3 concerns about outright fraud, clearly what the
4 Indiana Supreme Court had found in our case, that
5 there was a need to instill voter confidence in the
6 integrity of our election process and in the manner in
7 which we conducted that election process particularly
8 with respect to the in-person voting.

9 As a consequence, the Indiana General
10 Assembly adopted what is the nation's most restrictive
11 photo ID law. I would note that it's far more
12 restrictive than many of the provisions that you have.
13 For example, we don't have an opt-out provision where
14 an individual can bring two forms of various different
15 pieces of ID, including as I believe one of the
16 Senators referred to, a court document related to a
17 gender change. We don't have any of those. Basically
18 you have to -- you have to come forward with a
19 state-issued ID that displays the voter's photo and
20 expiration date and the voter's name.

21 Now, if I might, stepping forward,
22 recognizing my limited time, you've spent some time
23 talking about -- and I believe Mr. Von Spakovsky
24 discussed the University of Missouri study. What have
25 we learned over the course of this? We've had now

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1 three elections in which we've done photo ID, and what
2 we've learned is that there haven't been any problems.
3 The Secretary of State in his notation in the 2008
4 election, for example, received 1300 calls, complaints
5 from voters. Two dealt with photo ID. It's not a
6 situation where we're having massive problems.

7 The case that went to Crawford -- the
8 Crawford case, the ACLU and the various litigants,
9 including the Indiana Democratic party, referred to a
10 apocalyptic disenfranchisement of voters. The simple
11 fact is that hasn't happened in Indiana. It just
12 hasn't happened.

13 Now, with respect to the impact of this
14 on minority voters, we do know from the University of
15 Missouri study that Indiana voter registration and
16 Indiana turnout has increased rather dramatically.
17 Indeed attached to Secretary Rokita's statement, the
18 2004 General Election, 58 percent; 2008 General
19 Election, 62 percent. Now, I've heard some of the
20 Senators say "Well, that was because Barack Obama was
21 on the ticket."

22 The key factor -- and this is what the
23 University of Missouri report looked at was that 2002,
24 which was an off-year election, pre-Barack Obama,
25 which was nonphoto ID, our turnout was 34 percent.

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1 The 2006 General Election, again pre-Barack Obama, a
2 comparable off-year election, turnout was 40 percent.
3 We went up 6 percent after implementing photo ID.
4 That certainly wasn't the kind of disenfranchisement
5 that was predicted, the apocalyptic prediction of
6 disenfranchisement. Indeed we had a better voter
7 turnout. I would suggest that that's counter to most
8 of the states within the union.

9 Now, what happened there? I don't know
10 what the answer is. I mean, there's been speculation,
11 and there's been discussion and studies that talk
12 about voter confidence.

13 What I can tell you and one of the most
14 interesting things is the conclusion in the University
15 of Missouri report, that, in fact, photo ID actually
16 benefits Democrat -- traditional Democratic voters,
17 minorities and otherwise. And one of the interesting
18 parts that has not been referenced in this -- and it's
19 in this report at -- under Section 4. They refer to
20 the fact that on the other hand, the fact that there
21 were no Democratic candidates in the 2006 Senate race
22 might have led to a lower turnout than otherwise. In
23 fact, my examination of historical Senate election
24 data does indeed suggest that state voter turnout
25 tends to be lower when there's an uncompetitive Senate

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1 election at the top of the state ticket, all else
2 constant. Assuming that this phenomenon occurred in
3 2006 in Indiana, then the photo ID likely led to an
4 even greater increase in the voter turnout than the
5 2 percent observed in the raw data.

6 So the University of Missouri study said
7 we saw 2 percent because there was -- and in 2006 very
8 frankly Democrats really didn't run anybody on a
9 statewide thing, yet the Democratic voter turnout went
10 up. Well, it doesn't sound like photo ID has pushed
11 Democratic turnout down, at least based upon the
12 University of Missouri study which was focused purely
13 upon Indiana.

14 Now, I'm not going to make predictions
15 about what's going to happen in Texas. That's your
16 responsibility to take this information and figure out
17 if it works for Texas, but I can tell you that with
18 respect to us it's worked pretty well.

19 And let me tell you the other thing that
20 photo ID does, and this is the most significant thing
21 that photo ID did in Indiana. You guys have spent the
22 last 14 or so hours -- we've got Republicans pointing
23 at Democrats and saying "Voter fraud." We've got
24 Democrats pointing at Republicans and saying "Voter
25 suppression."

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1 Well, what photo ID has done in Indiana,
2 it's taken that argument off the table. We've been
3 unable to engage in election reform, and we in Indiana
4 weren't able to do that for years because we just
5 pointed at each other that way. Photo ID brought
6 confidence to the parties, to the Republicans, to the
7 Democrats, to allow us to engage in meaningful
8 election reform. A, we were allowed -- we began
9 purging our voter rolls. B, we went to satellite
10 voting. We went to early voting. We've got no
11 absentee balloting. I mean, we've been able to do
12 that because photo ID built a trust level between our
13 legislators to allow us to engage in other election
14 reforms and needed election reforms. And I would
15 suggest to you that's probably the most valuable part
16 of photo ID is it allows you to get past the finger
17 pointing you've been doing for the last 14 hours of
18 voter suppression versus voter fraud. It gets you
19 past that and allows you to engage in meaningful
20 election reform.

21 I see that my time is up. I'd be happy
22 to answer any questions.

23 **QUESTIONS FROM SENATE FLOOR**

24 SEN. WENTWORTH: Thank you. The Chair
25 recognizes Sen. Whitmire.

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1 SEN. WHITMIRE: Mr. Wheeler?

2 MR. WHEELER: Yes, sir?

3 SEN. WHITMIRE: Thank you for appearing.

4 I was curious listening to your describing what
5 instigated your program in Indiana. You were talking
6 about this massive fraud that the Supreme Court said
7 they couldn't even determine who the winner was.
8 Could you describe the massive fraud that was so
9 prevalent?

10 MR. WHEELER: The massive fraud as
11 described by this?

12 SEN. WHITMIRE: Yeah. You went through
13 this long scenario about an election that was settled
14 by a hundred votes, and it went to the Supreme Court,
15 and the Supreme Court said it was so bad they just
16 really couldn't hardly tell who won. What are the
17 facts of that massive fraud? I'm trying to see --
18 I've never heard of anything like that in Texas. I'm
19 trying to appreciate what you were facing.

20 MR. WHEELER: Absolutely. In the Pabey
21 case, we saw fraud in two areas: We saw some
22 in-person fraud, and we saw a lot of absentee fraud.
23 What they did is they used our bloated voter
24 registration list to engage in both absentee ballot
25 fraud and direct in-person voting, according to the

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1 record that was in -- before the Indiana Supreme
2 Court, which was --

3 SEN. WHITMIRE: Where -- do you-all
4 have -- do you-all have laws against voter fraud?

5 MR. WHEELER: Absolutely we do.

6 SEN. WHITMIRE: Was anyone prosecuted?

7 MR. WHEELER: Not that I'm aware of,
8 Senator.

9 SEN. WHITMIRE: Why not?

10 MR. WHEELER: Well, I believe the record
11 showed that a gentleman by the name of Bernard Carter
12 was the Lake County Prosecutor at the time. According
13 to the records in the case, he owned several of the
14 apartment buildings that were vacant but were used as
15 home addresses for fraudulent voters. Now, I don't
16 believe that Mr. Carter, in fact, was ever implicated
17 in that, but I do believe that a lot of those
18 fraudulent addresses did take place at --

19 SEN. WHITMIRE: Is it fair to say
20 you-all have pretty laxed prosecution of criminal
21 acts?

22 MR. WHEELER: I'd say it's very fair
23 that there's laxed prosecution of voter fraud,
24 absolutely.

25 SEN. WHITMIRE: Well, would you -- have

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1 you learned -- been in the state long enough to know
2 that we don't tolerate it? And if you could show us
3 instances of fraud -- do you know of any fraud that's
4 been alleged in the State of Texas?

5 MR. WHEELER: I believe there's a
6 witness coming up immediately after me that is
7 familiar with fraud in Texas.

8 SEN. WHITMIRE: Do you know in that
9 instance was someone prosecuted?

10 MR. WHEELER: No, sir, I don't.

11 SEN. WHITMIRE: Well, it makes a big
12 difference if you're trying to fix something and if
13 you can discover the fraud and you don't prosecute it,
14 I think you've got a criminal justice problem, which
15 we don't have in the State of Texas.

16 Do you have a significant bilingual
17 speaking population in Indiana?

18 MR. WHEELER: We have a 5 percent
19 Hispanic population.

20 SEN. WHITMIRE: Are you familiar with
21 our numbers in the State of Texas?

22 MR. WHEELER: Yes. If you'll give me
23 just a moment.

24 SEN. WHITMIRE: Well, let me just help
25 you. Would you not agree that Texas is much more

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1 diverse and has many more Spanish-speaking residents
2 than you'd find in Indiana?

3 MR. WHEELER: I'm told 36 percent.

4 SEN. WHITMIRE: What about the cost of
5 introducing your ID program in Indiana, what did you
6 approximately spend?

7 MR. WHEELER: That's an excellent point,
8 and that is, if you'll look at Secretary Rokita's
9 statement -- I don't know if you happen to have it in
10 front of you.

11 SEN. WHITMIRE: Yeah, I've read it.

12 MR. WHEELER: We spent about
13 1.25 million in HAVA Funds, which were federally
14 provided funds. So we were lucky enough not to have
15 to use our own state funds. I have no idea whether
16 you have HAVA Funds that are available for this
17 particular use, but the --

18 SEN. WHITMIRE: Well, we've been
19 promised. Are you familiar with how they intend to
20 fund the plan that you're here endorsing?

21 MR. WHEELER: I have no idea.

22 SEN. WHITMIRE: Well, it's pretty much a
23 promise by Senator Williams that he would work with us
24 to get those funds and that we've got some spots, but
25 we haven't scheduled those spots, nor do we know the

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1 amount. Do you think that would be significant?

2 MR. WHEELER: I think it's significant
3 to make those expenditures because I think it makes it
4 work. If you'll look at Indiana, what you heard again
5 and again earlier that Indiana was special because we
6 had 99 percent of people that had photo IDs, and I'd
7 suggest it's even higher than that, and that's
8 specifically because of this outreach.

9 SEN. WHITMIRE: One last thing that
10 you've got my attention on at this late hour. You
11 keep being so impressed with the turnout in 2008.

12 MR. WHEELER: I think I mentioned --
13 (Simultaneous discussion)

14 SEN. WHITMIRE: Don't you think the
15 2004 -- and I was reading the Secretary of State's
16 comparison about the Presidential Election in 2004,
17 particularly the Democratic Primary. Surely would you
18 not agree with me that's not apples and apples
19 comparing turnout and the dynamics and the reasons for
20 the 2004 election versus the 2008 when you had such a
21 contested Presidential Primary?

22 MR. WHEELER: Let me tell you the most
23 amazing thing about the 2008 race. If you buy into
24 the argument that photo ID in Indiana was designed to
25 suppress African-American and Hispanic voters and

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1 typical Democratic voters, that's the first year in
2 the last 40 years that Indiana went Democratic in the
3 Presidential Election.

4 SEN. WHITMIRE: Well, probably because
5 of the state -- wouldn't you agree that your economy,
6 your unemployment and the elements that were a part of
7 that campaign caused that turnout and also for sure
8 the selection and opportunity to vote for the --
9 whether it be Mrs. Clinton or Obama or others? I
10 mean, everywhere in the country they were experiencing
11 huge additional turnouts. And, in fact, I will turn
12 and ask you, how do you know it wouldn't have been
13 greater had you not had the voter ID?

14 MR. WHEELER: I'll tell you why I know
15 that, because the governor of the State of Indiana won
16 by almost 20 points, Republican governor. Every
17 statewide --

18 SEN. WHITMIRE: No, we're talking
19 about -- you're talking about the General Election.
20 I'm talking about -- I'm talking about the Primary.
21 You like to point out your great increase in numbers
22 in 2008. How do you know it wouldn't have been
23 greater if you had not had the voter ID?

24 MR. WHEELER: I have no idea. What I
25 will tell you --

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1 SEN. WHITMIRE: You have no idea.
2 Repeat that for me. You sit up there and say you had
3 an outstanding turnout.

4 MR. WHEELER: Can I finish my
5 question -- my answer?

6 SEN. DUNCAN: Hold on a minute, sir.
7 You're talking over each other, and the court reporter
8 can't get a record. Senator, if you-all could
9 exchange questions and answers?

10 SEN. WHITMIRE: I'm sorry. Is it not
11 true you have no way of knowing whether you would have
12 had a greater turnout if you had not had the voter ID
13 in the Democratic Primary in 2008?

14 MR. WHEELER: In the Democratic Primary?

15 SEN. WHITMIRE: Yeah.

16 MR. WHEELER: We had 73 percent
17 Democratic turnout in the Primary.

18 SEN. WHITMIRE: And I think I -- and you
19 probably know the reason because of the opportunity to
20 vote for those outstanding candidates. It was a very
21 contested Presidential Democratic Primary much more so
22 than the 2004 experience, but you keep pointing to
23 that as such a success for the voter ID. And I would
24 just ask you, how do you know it would not have been
25 greater had you not had the obstacles of a voter ID?

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1 MR. WHEELER: How do I know it wouldn't
2 have been less? I mean, the University of Missouri
3 study tells me that but for photo ID it should have
4 been less.

5 SEN. WHITMIRE: Do you-all have --

6 MR. WHEELER: If I can answer -- answer
7 the question that you had asked? What I do know is
8 that in 2008 in the General Election we had massive
9 turnout.

10 SEN. WHITMIRE: Yeah.

11 MR. WHEELER: Barack Obama won in
12 Indiana, the first Democrat in the last 40 years. We
13 also had -- and you asked me if I could control for
14 economic conditions. You said, "Well, couldn't it
15 have been bad economic conditions that caused that?"

16 SEN. WHITMIRE: Sure.

17 MR. WHEELER: And the answer is no. The
18 governor of the State of Indiana won re-election by 20
19 points. Every Republican officeholder won in Indiana
20 other than Barack Obama. So what I would answer your
21 question is no, it was not economic conditions.

22 SEN. WHITMIRE: Without -- excuse me.
23 Without knowing the circumstances of the contested
24 races and the popularity of your governor who may
25 have, you know, adopted Democratic policies for all I

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1 know --

2 MR. WHEELER: This was Mitch Daniels.

3 He did --

4 SEN. WHITMIRE: You know, I do not know
5 the circumstances. All I'm simply saying is
6 everywhere in the country, Texas included, we
7 experienced greater turnout because of the shape of
8 the country, the opportunity to vote for the popular
9 candidates on both sides. So the fact that you -- the
10 fact that you're trying to attribute voter ID to
11 allowing a greater turnout, we experienced it in
12 Texas, and we don't have voter ID.

13 MR. WHEELER: Senator, I did not --

14 SEN. WHITMIRE: One last thing I want to
15 ask you about. Did you say your reforms did away with
16 absentee voting, your voters?

17 MR. WHEELER: No. We were able to
18 get -- we went to no-fault absentee voting.

19 SEN. WHITMIRE: You went to what?

20 MR. WHEELER: We have no-fault absentee
21 voting, which is to say that basically all you have to
22 do is say "I'm going to be out on election day," and
23 you may go vote.

24 SEN. WHITMIRE: We have that. Do you
25 have mail-in early voting?

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1 MR. WHEELER: We do.

2 SEN. WHITMIRE: Do you ever experience
3 any alleged fraud in that area?

4 MR. WHEELER: I think in Pabey vs.
5 Pastrick there's documentation of it.

6 SEN. WHITMIRE: Why didn't you address
7 that?

8 MR. WHEELER: Because there was a
9 political compromise.

10 SEN. WHITMIRE: Oh, really? You-all do
11 that, too?

12 MR. WHEELER: Occasionally.

13 SEN. WHITMIRE: All right. Thank you
14 for being here.

15 MR. WHEELER: Thank you, Senator.

16 SEN. DUNCAN: The Chair recognizes
17 Sen. Watson.

18 SEN. WATSON: I appreciate you being
19 here. Senator Whitmire covered most of what I wanted
20 to ask, but I just want to make sure I'm clear. You
21 came here to give some very specific examples about
22 Indiana, but you don't have any statistical analysis
23 or data about the effects that Senate Bill -- proposed
24 Senate Bill 362 would have on Texas, African-Americans
25 in Texas or Hispanics in Texas or anybody else in

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1 Texas, do you?

2 MR. WHEELER: Absolutely not. I served
3 as an elected official prior to resigning to taking
4 this Commission job. That's your job. That's the job
5 of you guys. I wouldn't presume to tell you that.

6 SEN. WATSON: I appreciate you being
7 here. Thank you very much.

8 MR. WHEELER: Thank you.

9 SEN. DUNCAN: Thank you, Mr. Wheeler.
10 There are no other members queued up to ask questions.

11 MR. WHEELER: Thank you.

12 SEN. DUNCAN: We appreciate your
13 appearance, and welcome to Texas.

14 **TESTIMONY BY CHANDLER DAVIDSON**

15 SEN. DUNCAN: The next witness we'll
16 have is Chandler Davidson. Mr. Davidson, as you're
17 approaching, you have submitted written testimony.
18 That will be Exhibit 29.

19 (Exhibit No. 29 marked and admitted)

20 SEN. DUNCAN: And you are -- if you
21 will, state your name and who you represent, and you
22 have ten minutes.

23 MR. DAVIDSON: Honorable Senators, I'm
24 privileged to be here at your invitation. Thank you.
25 Between 1966 and 2003, I taught politics and sociology

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1 at Rice University and specialized in voting behavior
2 and voting rights.

3 When I joined the Rice University
4 faculty in 1966, two persons I made a point of meeting
5 because of my research interests both had offices on
6 Lyons Avenue in Houston's Fifth Ward. One was a
7 charming, if rather formidable young woman, who had
8 just been nominated for a seat in this body and with
9 whom I enjoyed a friendship that lasted the rest of
10 her life, Barbara Jordan. I see her smiling face over
11 there. She had twice previously failed to win
12 nomination for a House seat in a heavily white
13 district in which racially polarized voting prevailed.
14 Her Senate district, however, was almost half black,
15 and she was able to win.

16 The other person I met was a dentist,
17 also a charming individual, Dr. Lonnie Smith, the
18 named plaintiff in Smith v. Allright, the case
19 Thurgood Marshall successfully argued before the
20 Supreme Court in 1944 invalidating the Texas White
21 Primary. Ladies and gentlemen, I feel their presence
22 today in this room.

23 Given the long history of legally
24 sanctioned disfranchisement of large and disparate
25 groups of citizens from the founding of the Republic

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1 to the recent past, Senate Bill 362 raises important
2 questions to scholars of voting rights. Indeed the
3 bill brings to mind events during the half century
4 following the Civil War when the language of
5 progressive reform in Texas cloaked the
6 disfranchisement of blacks, Latinos and poor whites,
7 those most likely to vote for Republican or populist
8 candidates. Actually adopted for partisan and
9 racially discriminatory purpose, these laws were often
10 presented as high-minded attacks on fraud, efforts to
11 purify the electorate that would only inconvenience
12 vote sellers or the ignorant and shiftless.

13 The poll tax was one of the most
14 notorious disfranchising mechanisms of its day. The
15 current debate over Senate Bill 362 as well as similar
16 bills in other states has led to claims that they are
17 a modern day poll tax. This implies that the Texas
18 bill, too, falls within the ignominious American
19 tradition of disfranchising laws passed under the
20 guise of good government reform.

21 Frederick Ogden, perhaps the foremost
22 scholar of the poll tax, wrote in the 1950s, I quote,
23 "While critics of legalized restrictions on Negro
24 voting may find it hard to discover any high moral
25 tone in such activities, these restrictions reflected

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1 a movement for purifying the electoral process in
2 southern states."

3 Ogden quotes the editor of the
4 San Antonio Express writing in 1902, "By requiring a
5 poll tax receipt, secured six months previous to an
6 election, fraudulent elections can be prevented almost
7 entirely."

8 The most accessible photo ID required by
9 Bill 362 probably consists of the state's driver's
10 license. Obtaining one has been shown in other states
11 to be a good deal more difficult for some people than
12 it might seem at first glance. For example, at least
13 43,000 persons of voting age in Indiana are estimated
14 to have neither a driver's license or the other most
15 likely form of photo ID in that state. The number
16 of -- the number in Texas would probably be
17 significantly greater.

18 The demographic characteristics of
19 persons lacking the requisite ID are suggested by a
20 November 2006 telephone survey of 987 randomly
21 selected voting-age American citizens by the
22 independent Opinion Research Corporation conducted for
23 the Brennan Center for Justice at NYU School of Law.
24 11 percent did not have valid government-issued photo
25 ID, while 18 percent of citizens 65 years of age or

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1 older lacked it, as did 25 percent of
2 African-Americans. The latter two demographic groups,
3 the elderly and African-Americans, are more likely to
4 self-identify as Democrats, African-Americans
5 disproportionately so. There is no reason to believe
6 that this national pattern is much different than that
7 in Texas.

8 Have supporters of Senate Bill 362
9 demonstrated that there is a significant degree of
10 fraud of the kind -- that the bill is fashioned to
11 prevent? Others today and tonight have described
12 Attorney General Abbott's unsuccessful effort to
13 uncover personal impersonation fraud.

14 Suffice it to say that Senate Bill 362
15 is designed solely to prevent voter impersonation at
16 the polls. In both 2005 and 2007 Republicans in the
17 legislature introduced similar photo ID bills. In
18 2007, according to a newspaper reporter, Republicans
19 liked the voter ID bill because they believe it will
20 weaken Democrats, but can argue that it is a
21 reasonable requirement because it would prevent vote
22 fraud.

23 Not all Republicans, however, shared the
24 belief that it would curtail fraud. Royal Masset,
25 Former Political Director of the Texas Republican

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1 Party, was one. He told a reporter that among his
2 fellow Republicans it was an article of religious
3 faith that voter fraud is causing us to lose
4 elections. Masset did not share that faith. He did
5 believe, however -- he told the reporter, that
6 requiring photo IDs could cause enough of a dropoff in
7 legitimate Democratic voting to add 3 percent to the
8 Republicans vote.

9 When Mr. Abbott's failure to find almost
10 any voter impersonation fraud is placed alongside the
11 fact that the previous legislative votes for a Texas
12 photo ID bill were almost entirely along partisan
13 lines and that the people most likely to be
14 disfranchised by it would be Democratic voters,
15 particularly African-Americans and Latinos as well as
16 lower income, elderly and disabled citizens, Texas
17 Senate Bill 362 appears to fit comfortably within the
18 long and sad history of those in positions of power
19 disfranchising the above populations for partisan
20 gain.

21 Moreover, today's Republicans' attempt
22 at justifications of the bill with claims of voter
23 fraud are at least as dubious as those which attempted
24 to justify the now and unconstitutional poll tax at
25 the beginning of the 20th century.

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